

AMENDED IN SENATE AUGUST 22, 2006

AMENDED IN SENATE JUNE 21, 2006

AMENDED IN ASSEMBLY MAY 9, 2006

AMENDED IN ASSEMBLY APRIL 18, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 2341

Introduced by Assembly Member Villines
(Coauthors: Assembly Members Benoit, *Cogdill*, DeVore, Maze,
Mountjoy, and Wyland)
(Coauthor: Senator Dutton)

February 23, 2006

An act to amend Sections 1103, 1107.5, 1108, 1110, 1113, 1155, 1808, 1809, 1900.5, 1905, 2010, 2011, 2112, 6014, 6018, 6019.1, 6020.5, 6518, 6519, 6615, 8014, 8018, 8019.1, 8020.5, 8518, 8519, 8615, 12535, 12539, 12540.1, 12550.5, 12628, 12629, 12635, 15678.4, 15678.10, 16915.5, 16954, 16960, 17350.5, 17355, 17356, 17552, and 17554.5 of, and to add Section 1905.1 to, the Corporations Code, to amend Sections 3126, 5758, and 5760 of the Financial Code, and to amend Sections 23153, 23332, 23335, and 23561 of, to add Sections 17937, 17947, and 17948.3 to, and to repeal Sections 17945, 17948.1, and 23334 of, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 2341, as amended, Villines. Tax clearance certificate: minimum franchise tax: relief.

Existing law provides that every corporation incorporated in this state, qualified to transact intrastate business in this state, or doing business in this state is subject to the minimum franchise tax. Liability for the minimum franchise tax begins on the earlier of the date of incorporation, qualification, or commencement of business within this state. The annual obligation to pay the franchise tax ends on the effective date of dissolution or withdrawal or, if later, the date the corporation ceases to do business within the state.

Existing law requires a dissolving or withdrawing corporation subject to tax in this state to pay a tax for the year it ceases to do business in California. The amount of tax owed is measured by the corporation's net income for its final taxable year, but cannot be less than the minimum franchise tax.

Existing law requires, prior to the dissolution of a corporation, that the corporation is required to obtain a Tax Clearance Certificate from the Franchise Tax Board certifying that its tax liabilities, if any, have been paid, assumed, or guaranteed by bond or otherwise.

Existing law also provides that every limited partnership, limited liability partnership, and limited liability company registered in this state, qualified to transact intrastate business in this state, or doing business in this state is subject to an annual tax equal to the minimum franchise tax. Liability for the annual tax begins on the date of registration with the Secretary of State, qualification, or commencing to do business within this state. The obligation to pay the annual tax ends on the effective date of cancellation of the entity or the date the entity ceases to do business in the state.

This bill would eliminate the requirement that, prior to dissolution of a corporation, the corporation obtain a tax clearance certificate and instead provide that the Secretary of State notify the Franchise Tax Board of the dissolution.

This bill would provide that the minimum franchise tax and the annual tax, as applicable, would not be assessed against these entities in the year that a final return is filed if the entity did not thereafter do business in California and dissolution, surrender, or cancellation of the entity is completed before the end of 12-month period following the date the final tax return was filed.

This bill would permit certain suspended corporations to seek dissolution without requiring payment of the accrued tax liability for years in which the corporation was inactive and not doing business.

This bill would also make conforming changes to existing law.

This bill would incorporate specified changes proposed by AB 339 if both this bill and AB 339 are enacted.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1103 of the Corporations Code is
2 amended to read:

3 1103. After approval of a merger by the board and any
4 approval of the outstanding shares (Section 152) required by
5 Chapter 12 (commencing with Section 1200), the surviving
6 corporation shall file a copy of the agreement of merger with an
7 officers' certificate of each constituent corporation attached
8 stating the total number of outstanding shares of each class
9 entitled to vote on the merger, that the principal terms of the
10 agreement in the form attached were approved by that
11 corporation by a vote of a number of shares of each class which
12 equaled or exceeded the vote required, specifying each class
13 entitled to vote and the percentage vote required of each class, or
14 that the merger agreement was entitled to be and was approved
15 by the board alone under the provisions of Section 1201. If
16 equity securities of a parent of a constituent corporation are to be
17 issued in the merger, the officers' certificate of that constituent
18 corporation shall state either that no vote of the shareholders of
19 the parent was required or that the required vote was obtained.
20 The merger and any amendment of the articles of the surviving
21 corporation contained in the merger agreement shall thereupon
22 be effective (subject to subdivision (c) of Section 110 and subject
23 to the provisions of Section 1108) and the several parties thereto
24 shall be one corporation. The Secretary of State may certify a
25 copy of the merger agreement separate from the officers'
26 certificates attached thereto.

27 SEC. 2. Section 1107.5 of the Corporations Code is amended
28 to read:

29 1107.5. (a) Upon merger pursuant to this chapter, a surviving
30 domestic or foreign corporation or other business entity shall be
31 deemed to have assumed the liability of each disappearing
32 domestic or foreign corporation or other business entity that is

1 taxed under Part 10 (commencing with Section 17001) of, or
2 under Part 11 (commencing with Section 23001) of, Division 2
3 of the Revenue and Taxation Code for the following:

4 (1) To prepare and file, or to cause to be prepared and filed,
5 tax and information returns otherwise required of that
6 disappearing entity as specified in Chapter 2 (commencing with
7 Section 18501) of Part 10.2 of Division 2 of the Revenue and
8 Taxation Code.

9 (2) To pay any tax liability determined to be due.

10 (b) If the surviving entity is a domestic limited liability
11 company, domestic corporation, or registered limited liability
12 partnership or a foreign limited liability company, foreign limited
13 liability partnership, or foreign corporation that is registered or
14 qualified to do business in California, the Secretary of State shall
15 notify the Franchise Tax Board of the merger.

16 SEC. 3. Section 1108 of the Corporations Code is amended to
17 read:

18 1108. (a) The merger of any number of domestic
19 corporations with any number of foreign corporations may be
20 effected if the foreign corporations are authorized by the laws
21 under which they are formed to effect the merger. The surviving
22 corporation may be any one of the constituent corporations and
23 shall continue to exist under the laws of the state or place of its
24 incorporation.

25 (b) If the surviving corporation is a domestic corporation, the
26 merger proceedings with respect to that corporation and any
27 domestic disappearing corporation shall conform to the
28 provisions of this chapter governing the merger of domestic
29 corporations, but if the surviving corporation is a foreign
30 corporation, then, subject to the requirements of subdivision (d)
31 and of Section 407 and Chapters 12 (commencing with Section
32 1200) and 13 (commencing with Section 1300) (with respect to
33 any domestic constituent corporations), the merger proceedings
34 may be in accordance with the laws of the state or place of
35 incorporation of the surviving corporation.

36 (c) If the surviving corporation is a domestic corporation, the
37 agreement and the officers' certificate of each domestic or
38 foreign constituent corporation shall be filed as provided in
39 Section 1103, or the certificate of ownership shall be filed as
40 provided in Section 1110, and thereupon, subject to subdivision

1 (c) of Section 110, the merger shall be effective as to each
2 domestic constituent corporation; and each foreign disappearing
3 corporation that is qualified for the transaction of intrastate
4 business shall by virtue of the filing, subject to subdivision (c) of
5 Section 110, automatically surrender its right to transact
6 intrastate business.

7 (d) If the surviving corporation is a foreign corporation, the
8 merger shall become effective in accordance with the law of the
9 jurisdiction in which it is organized, but, except as provided in
10 subdivision (e), the merger shall be effective as to any domestic
11 disappearing corporation as of the time of effectiveness in the
12 foreign jurisdiction upon the filing in this state as required by this
13 subdivision. There shall be filed as to the domestic disappearing
14 corporation or corporations the documents described in any one
15 of the following paragraphs:

16 (1) A copy of the agreement, certificate or other document
17 filed by the surviving foreign corporation in the state or place of
18 its incorporation for the purpose of effecting the merger, which
19 copy shall be certified by the public officer having official
20 custody of the original.

21 (2) An executed counterpart of the agreement, certificate or
22 other document filed by the surviving foreign corporation in the
23 state or place of its incorporation for the purpose of effecting the
24 merger.

25 (3) A copy of the agreement of merger with an officers'
26 certificate of the surviving foreign corporation and of each
27 constituent domestic corporation attached, which officers'
28 certificates shall conform to the requirements of Section 1103.

29 (4) A certificate of ownership pursuant to Section 1110.

30 (e) If the date of the filing in this state pursuant to subdivision
31 (d) is more than six months after the time of the effectiveness in
32 the foreign jurisdiction, or if the powers of the domestic
33 corporation are suspended at the time of effectiveness in the
34 foreign jurisdiction, the merger shall be effective as to the
35 domestic disappearing corporation or corporations as of the date
36 of filing in this state. Each foreign disappearing corporation that
37 is qualified for the transaction of intrastate business shall, by
38 virtue of the filing pursuant to subdivision (d), automatically
39 surrender its right to transact intrastate business as of the date of

1 filing in this state regardless of the time of effectiveness as to a
2 domestic disappearing corporation.

3 (f) The provisions of the last two sentences of Section 1101
4 and Chapter 12 (commencing with Section 1200) and Chapter 13
5 (commencing with Section 1300) apply to the rights of the
6 shareholders of any of the constituent corporations that are
7 domestic corporations and of any domestic corporation that is a
8 parent party of any foreign constituent corporation.

9 SEC. 4. Section 1110 of the Corporations Code is amended to
10 read:

11 1110. (a) If a domestic corporation owns all the outstanding
12 shares, or owns less than all the outstanding shares but at least 90
13 percent of the outstanding shares of each class, of a corporation
14 or corporations, domestic or foreign, the merger of the subsidiary
15 corporation or corporations into the parent corporation or the
16 merger into the subsidiary corporation of the parent corporation
17 and any other subsidiary corporation or corporations, may be
18 effected by a resolution or plan of merger adopted and approved
19 by the board of the parent corporation and the filing of a
20 certificate of ownership as provided in subdivision (e). The
21 resolution or plan of merger shall provide for the merger and
22 shall provide that the surviving corporation assumes all the
23 liabilities of each disappearing corporation and shall include any
24 other provisions required by this section.

25 (b) If the parent corporation owns less than all the outstanding
26 shares but at least 90 percent of the outstanding shares of each
27 class of the subsidiary corporation that is a party to the merger,
28 the resolution or plan of merger also shall set forth the securities,
29 cash, property, or rights to be issued, paid, delivered, or granted
30 upon surrender of each outstanding share of the subsidiary
31 corporation not owned by the parent corporation and the entire
32 resolution or plan of merger as well as the consideration to be
33 received for each share of the subsidiary corporation not owned
34 by the parent corporation, shall be approved by the board of that
35 subsidiary corporation.

36 (c) If the parent corporation is to be merged into one of its
37 subsidiary corporations, the resolution or plan of merger also
38 shall provide for the pro rata conversion of the outstanding shares
39 of the parent corporation into shares of the surviving subsidiary
40 corporation. In this case, the entire resolution or plan of merger

1 shall be approved by the board of the surviving subsidiary
2 corporation and, if the merger, but for the operation of this
3 section, would be a merger reorganization (Section 181) the
4 principal terms of which would be required to be approved by the
5 outstanding shares (Section 152) of any class of the parent
6 corporation pursuant to subdivision (d) of Section 1201, the
7 principal terms of the resolution or plan of merger shall be
8 approved by the outstanding shares (Section 152) of that same
9 class of the parent corporation.

10 (d) In any merger pursuant to this section, the resolution or
11 plan of merger may provide for the amendment of the articles of
12 the surviving corporation to change its name, subject to Section
13 201, regardless of whether the name so adopted is the same as or
14 similar to that of one of the disappearing corporations. The
15 provision shall establish the wording of the amendment pursuant
16 to paragraph (2) of subdivision (a) of Section 907 and the
17 resolution or plan of merger shall not provide for the amendment
18 of the articles of the surviving corporation other than to change
19 its name.

20 (e) After the required approval or approvals of the resolution
21 or plan of merger, a certificate of ownership consisting of an
22 officers' certificate of the parent corporation shall be filed, and a
23 copy thereof for each domestic subsidiary corporation and
24 qualified foreign disappearing subsidiary corporation which is a
25 party to the merger shall also be filed. The certificate of
26 ownership shall:

27 (1) Identify the parent and subsidiary corporation or
28 corporations.

29 (2) Set forth the share ownership by the parent corporation of
30 each subsidiary corporation as 100 percent of the outstanding
31 shares or as at least 90 percent of the outstanding shares of each
32 class, as the case may be.

33 (3) Set forth the resolution or plan of merger.

34 (4) Set forth approval of the resolution or plan of merger by
35 the board of the parent corporation.

36 (5) Set forth other approvals of the resolution or plan of
37 merger as required under subdivision (b) or (c), if applicable.

38 (f) Upon the filing of the certificate of ownership, the merger
39 shall be effective and any amendment of the articles of the
40 surviving corporation set forth in the certificate shall be effective.

(g) A merger pursuant to this section may be effected if the parent corporation is a foreign corporation and if at least one subsidiary corporation is a domestic corporation but in such a case the certificate of ownership prepared as in subdivision (e) or the document required by subdivision (d) of Section 1108 shall be filed as to each domestic and qualified foreign subsidiary corporation, but no filing shall be made as to the foreign parent corporation. No merger into or with a foreign corporation may be effected as provided by this section unless the laws of the state or place of its incorporation permit that action.

(h) In the event all of the outstanding shares of a subsidiary domestic corporation party to a merger effected under this section are not owned by the parent corporation immediately prior to the merger, the parent corporation shall, at least 20 days before the effective date of the merger, give notice to each shareholder of such subsidiary corporation that the merger will become effective on or after a specified date. The notice shall contain a copy of the resolution or plan of merger and the information required by subdivision (a) of Section 1301. The notice shall be sent by mail addressed to the shareholder at the address of the shareholder as it appears on the records of the corporation. The shareholder shall have the right to demand payment of cash for the shares of the shareholder pursuant to Chapter 13 (commencing with Section 1300).

(i) If an agreement of merger is entered into between a parent corporation and one or more of its subsidiary corporations and the share ownership requirements of subdivision (a) are met, the agreement of merger may be filed as a plan of merger with a certificate of ownership in accordance with the requirements of this section, in which case Sections 1101, 1102, 1103, 1200, 1201, and 1202 shall not apply; or the agreement of merger may be filed pursuant to Section 1103, in which case this section shall not apply.

SEC. 5. Section 1113 of the Corporations Code is amended to read:

1113. (a) Any one or more corporations may merge with one or more other business entities (Section 174.5). One or more domestic corporations (Section 167) not organized under this division and one or more foreign corporations (Section 171) may be parties to the merger. Notwithstanding the provisions of this

1 section, the merger of any number of corporations with any
2 number of other business entities may be effected only if:

3 (1) In a merger in which a domestic corporation not organized
4 under this division or a domestic other business entity is a party,
5 it is authorized by the laws under which it is organized to effect
6 the merger.

7 (2) In a merger in which a foreign corporation is a party, it is
8 authorized by the laws under which it is organized to effect the
9 merger.

10 (3) In a merger in which a foreign other business entity is a
11 party, it is authorized by the laws under which it is organized to
12 effect the merger.

13 (b) Each corporation and each other party which desires to
14 merge shall approve, and shall be a party to, an agreement of
15 merger. Other persons, including a parent party (Section 1200),
16 may be parties to the agreement of merger. The board of each
17 corporation which desires to merge, and, if required the
18 shareholders, shall approve the agreement of merger. The
19 agreement of merger shall be approved on behalf of each party
20 by those persons required to approve the merger by the laws
21 under which it is organized. The agreement of merger shall state:

22 (1) The terms and conditions of the merger.

23 (2) The name and place of incorporation or organization of
24 each party to the merger and the identity of the surviving party.

25 (3) The amendments, if any, subject to Sections 900 and 907,
26 to the articles of the surviving corporation, if applicable, to be
27 effected by the merger. If any amendment changes the name of
28 the surviving corporation, if applicable, the new name may be,
29 subject to subdivision (b) of Section 201, the same as or similar
30 to the name of a disappearing party to the merger.

31 (4) The manner of converting the shares of each constituent
32 corporation into shares, interests, or other securities of the
33 surviving party. If any shares of any constituent corporation are
34 not to be converted solely into shares, interests or other securities
35 of the surviving party, the agreement of merger shall state (i) the
36 cash, rights, securities, or other property which the holders of
37 those shares are to receive in exchange for the shares, which
38 cash, rights, securities, or other property may be in addition to or
39 in lieu of shares, interests or other securities of the surviving
40 party, or (ii) that the shares are canceled without consideration.

1 (5) Any other details or provisions required by the laws under
2 which any party to the merger is organized, including, if a public
3 benefit corporation or a religious corporation is a party to the
4 merger, Section 6019.1, or, if a mutual benefit corporation is a
5 party to the merger, Section 8019.1, or, if a consumer
6 cooperative corporation is a party to the merger, Section 12540.1,
7 or, if a domestic limited partnership is a party to the merger,
8 Section 15678.2, or, if a domestic partnership is a party to the
9 merger, Section 16911, or, if a domestic limited liability
10 company is a party to the merger, Section 17551.

11 (6) Any other details or provisions as are desired, including,
12 without limitation, a provision for the payment of cash in lieu of
13 fractional shares or for any other arrangement with respect
14 thereto consistent with the provisions of Section 407.

15 (c) Each share of the same class or series of any constituent
16 corporation (other than the cancellation of shares held by a party
17 to the merger or its parent, or a wholly owned subsidiary of
18 either, in another constituent corporation) shall, unless all
19 shareholders of the class or series consent and except as provided
20 in Section 407, be treated equally with respect to any distribution
21 of cash, rights, securities, or other property. Notwithstanding
22 paragraph (4) of subdivision (b), the nonredeemable common
23 shares of a constituent corporation may be converted only into
24 nonredeemable common shares of a surviving corporation or a
25 parent party (Section 1200) or nonredeemable equity securities of
26 a surviving party other than a corporation if another party to the
27 merger or its parent owns, directly or indirectly, prior to the
28 merger shares of that corporation representing more than 50
29 percent of the voting power of that corporation, unless all of the
30 shareholders of the class consent and except as provided in
31 Section 407.

32 (d) Notwithstanding its prior approval, an agreement of
33 merger may be amended prior to the filing of the agreement of
34 merger or the certificate of merger, as is applicable, if the
35 amendment is approved by the board of each constituent
36 corporation and, if the amendment changes any of the principal
37 terms of the agreement, by the outstanding shares (Section 152),
38 if required by Chapter 12 (commencing with Section 1200), in
39 the same manner as the original agreement of merger. If the
40 agreement of merger as so amended and approved is also

1 approved by each of the other parties to the agreement of merger,
2 the agreement of merger as so amended shall then constitute the
3 agreement of merger.

4 (e) The board of a constituent corporation may, in its
5 discretion, abandon a merger, subject to the contractual rights, if
6 any, of third parties, including other parties to the agreement of
7 merger, without further approval by the outstanding shares
8 (Section 152), at any time before the merger is effective.

9 (f) Each constituent corporation shall sign the agreement of
10 merger by its chairperson of the board, president or a vice
11 president and also by its secretary or an assistant secretary acting
12 on behalf of their respective corporations.

13 (g) (1) If the surviving party is a corporation or a foreign
14 corporation, or if a public benefit corporation (Section 5060), a
15 mutual benefit corporation (Section 5059), a religious
16 corporation (Section 5061), or a corporation organized under the
17 Consumer Cooperative Corporation Law (Section 12200) is a
18 party to the merger, after required approvals of the merger by
19 each constituent corporation through approval of the board
20 (Section 151) and any approval of the outstanding shares
21 (Section 152) required by Chapter 12 (commencing with Section
22 1200) and by the other parties to the merger, the surviving party
23 shall file a copy of the agreement of merger with an officers'
24 certificate of each constituent domestic and foreign corporation
25 attached stating the total number of outstanding shares or
26 membership interests of each class entitled to vote on the merger
27 (and identifying any other person or persons whose approval is
28 required), that the agreement of merger in the form attached or its
29 principal terms, as required, were approved by that corporation
30 by a vote of a number of shares or membership interests of each
31 class that equaled or exceeded the vote required, specifying each
32 class entitled to vote and the percentage vote required of each
33 class and, if applicable, by that other person or persons whose
34 approval is required, or that the merger agreement was entitled to
35 be and was approved by the board alone (as provided in Section
36 1201, in the case of corporations subject to that section). If equity
37 securities of a parent party (Section 1200) are to be issued in the
38 merger, the officers' certificate of that controlled party shall state
39 either that no vote of the shareholders of the parent party was
40 required or that the required vote was obtained. In lieu of an

1 officers' certificate, a certificate of merger, on a form prescribed
2 by the Secretary of State, shall be filed for each constituent other
3 business entity. The certificate of merger shall be executed and
4 acknowledged by each domestic constituent limited liability
5 company by all managers of the limited liability company (unless
6 a lesser number is specified in its articles or organization or
7 operating agreement) and by each domestic constituent limited
8 partnership by all general partners (unless a lesser number is
9 provided in its certificate of limited partnership or partnership
10 agreement) and by each domestic constituent general partnership
11 by two partners (unless a lesser number is provided in its
12 partnership agreement) and by each foreign constituent limited
13 liability company by one or more managers and by each foreign
14 constituent general partnership or foreign constituent limited
15 partnership by one or more general partners, and by each
16 constituent reciprocal insurer by the chairperson of the board,
17 president, or vice president, and by the secretary or assistant
18 secretary, or, if a constituent reciprocal insurer has not appointed
19 those officers, by the chairperson of the board, president, or vice
20 president, and by the secretary or assistant secretary of the
21 constituent reciprocal insurer's attorney-in-fact, and by each
22 other party to the merger by those persons required or authorized
23 to execute the certificate of merger by the laws under which that
24 party is organized, specifying for that party the provision of law
25 or other basis for the authority of the signing persons. The
26 certificate of merger shall set forth, if a vote of the shareholders,
27 members, partners, or other holders of interests of the constituent
28 other business entity was required, a statement setting forth the
29 total number of outstanding interests of each class entitled to vote
30 on the merger and that the agreement of merger in the form
31 attached or its principal terms, as required, were approved by a
32 vote of the number of interests of each class that equaled or
33 exceeded the vote required, specifying each class entitled to vote
34 and the percentage vote required of each class, and any other
35 information required to be set forth under the laws under which
36 the constituent other business entity is organized, including, if a
37 domestic limited partnership is a party to the merger, subdivision
38 (a) of Section 15678.4, if a domestic partnership is a party to the
39 merger, subdivision (b) of Section 16915, and, if a domestic
40 limited liability company is a party to the merger, subdivision (a)

1 of Section 17552. The certificate of merger for each constituent
2 foreign other business entity, if any, shall also set forth the
3 statutory or other basis under which that foreign other business
4 entity is authorized by the laws under which it is organized to
5 effect the merger. The merger and any amendment of the articles
6 of the surviving corporation, if applicable, contained in the
7 agreement of merger shall be effective upon filing of the
8 agreement of merger with an officer's certificate of each
9 constituent domestic and foreign corporation and a certificate of
10 merger for each constituent other business entity, subject to
11 subdivision (c) of Section 110 and subject to the provisions of
12 subdivision (j), and the several parties thereto shall be one entity.
13 If a domestic reciprocal insurer organized after 1974 to provide
14 medical malpractice insurance is a party to the merger, the
15 agreement of merger or certificate of merger shall not be filed
16 until there has been filed the certificate issued by the Insurance
17 Commissioner approving the merger pursuant to Section 1555 of
18 the Insurance Code. The Secretary of State may certify a copy of
19 the agreement of merger separate from the officers' certificates
20 and certificates of merger attached thereto.

21 (2) If the surviving entity is an other business entity, and no
22 public benefit corporation (Section 5060), mutual benefit
23 corporation (Section 5059), religious corporation (Section 5061),
24 or corporation organized under the Consumer Cooperative
25 Corporation Law (Section 12200) is a party to the merger, after
26 required approvals of the merger by each constituent corporation
27 through approval of the board (Section 151) and any approval of
28 the outstanding shares (Section 152) required by Chapter 12
29 (commencing with Section 1200) and by the other parties to the
30 merger, the parties to the merger shall file a certificate of merger
31 in the office of, and on a form prescribed by, the Secretary of
32 State. The certificate of merger shall be executed and
33 acknowledged by each constituent domestic and foreign
34 corporation by its chairperson of the board, president or a vice
35 president and also by its secretary or an assistant secretary and by
36 each domestic constituent limited liability company by all
37 managers of the limited liability company (unless a lesser
38 number is specified in its articles of organization or operating
39 agreement) and by each domestic constituent limited partnership
40 by all general partners (unless a lesser number is provided in its

1 certificate of limited partnership or partnership agreement) and
2 by each domestic constituent general partnership by two partners
3 (unless a lesser number is provided in its partnership agreement)
4 and by each foreign constituent limited liability company by one
5 or more managers and by each foreign constituent general
6 partnership or foreign constituent limited partnership by one or
7 more general partners, and by each constituent reciprocal insurer
8 by the chairperson of the board, president, or vice president, and
9 by the secretary or assistant secretary, or, if a constituent
10 reciprocal insurer has not appointed those officers, by the
11 chairperson of the board, president, or vice president, and by the
12 secretary or assistant secretary of the constituent reciprocal
13 insurer's attorney-in-fact. The certificate of merger shall be
14 signed by each other party to the merger by those persons
15 required or authorized to execute the certificate of merger by the
16 laws under which that party is organized, specifying for that
17 party the provision of law or other basis for the authority of the
18 signing persons. The certificate of merger shall set forth all of the
19 following:

20 (A) The name, place of incorporation or organization, and the
21 Secretary of State's file number, if any, of each party to the
22 merger, separately identifying the disappearing parties and the
23 surviving party.

24 (B) If the approval of the outstanding shares of a constituent
25 corporation was required by Chapter 12 (commencing with
26 Section 1200), a statement setting forth the total number of
27 outstanding shares of each class entitled to vote on the merger
28 and that the principal terms of the agreement of merger were
29 approved by a vote of the number of shares of each class entitled
30 to vote and the percentage vote required of each class.

31 (C) The future effective date or time, not more than 90 days
32 subsequent to the date of filing of the merger, if the merger is not
33 to be effective upon the filing of the certificate of merger with
34 the office of the Secretary of State.

35 (D) A statement, by each party to the merger which is a
36 domestic corporation not organized under this division, a foreign
37 corporation, or an other business entity, of the statutory or other
38 basis under which that party is authorized by the laws under
39 which it is organized to effect the merger.

1 (E) Any other information required to be stated in the
2 certificate of merger by the laws under which each party to the
3 merger is organized, including, if a domestic limited liability
4 company is a party to the merger, subdivision (a) of Section
5 17552, if a domestic partnership is a party to the merger,
6 subdivision (b) of Section 16915, and, if a domestic limited
7 partnership is a party to the merger, subdivision (a) of Section
8 15678.4.

9 (F) Any other details or provisions that may be desired.

10 Unless a future effective date or time is provided in a
11 certificate of merger, in which event the merger shall be effective
12 at that future effective date or time, a merger shall be effective
13 upon the filing of the certificate of merger in the office of the
14 Secretary of State and the several parties thereto shall be one
15 entity. The surviving other business entity shall keep a copy of
16 the agreement of merger at its principal place of business which,
17 for purposes of this subdivision, shall be the office referred to in
18 Section 17057 if a domestic limited liability company, at the
19 business address specified in paragraph (5) of subdivision (a) of
20 Section 17552 if a foreign limited liability company, at the office
21 referred to in subdivision (a) of Section 16403 if a domestic
22 general partnership, at the business address specified in
23 subdivision (f) of Section 16911 if a foreign partnership, at the
24 office referred to in subdivision (a) of Section 15614 if a
25 domestic limited partnership, or at the business address specified
26 in paragraph (5) of subdivision (a) of Section 15678.4 if a foreign
27 limited partnership. Upon the request of a holder of equity
28 securities of a party to the merger, a person with authority to do
29 so on behalf of the surviving other business entity shall promptly
30 deliver to that holder, a copy of the agreement of merger. A
31 waiver by that holder of the rights provided in the foregoing
32 sentence shall be unenforceable. If a domestic reciprocal insurer
33 organized after 1974 to provide medical malpractice insurance is
34 a party to the merger the agreement of merger or certificate of
35 merger shall not be filed until there has been filed the certificate
36 issued by the Insurance Commissioner approving the merger in
37 accordance with Section 1555 of the Insurance Code.

38 (h) (1) A copy of an agreement of merger certified on or after
39 the effective date by an official having custody thereof has the
40 same force in evidence as the original and, except as against the

1 state, is conclusive evidence of the performance of all conditions
2 precedent to the merger, the existence on the effective date of the
3 surviving party to the merger and the performance of the
4 conditions necessary to the adoption of any amendment to the
5 articles, if applicable, contained in the agreement of merger.

6 (2) For all purposes for a merger in which the surviving entity
7 is a domestic other business entity and the filing of a certificate
8 of merger is required by paragraph (2) of subdivision (g), a copy
9 of the certificate of merger duly certified by the Secretary of
10 State is conclusive evidence of the merger of the constituent
11 corporations, either by themselves or together with the other
12 parties to the merger, into the surviving other business entity.

13 (i) (1) Upon a merger pursuant to this section, the separate
14 existences of the disappearing parties to the merger cease and the
15 surviving party to the merger shall succeed, without other
16 transfer, to all the rights and property of each of the disappearing
17 parties to the merger and shall be subject to all the debts and
18 liabilities of each in the same manner as if the surviving party to
19 the merger had itself incurred them.

20 (2) All rights of creditors and all liens upon the property of
21 each of the constituent corporations and other parties to the
22 merger shall be preserved unimpaired, provided that those liens
23 upon property of a disappearing party shall be limited to the
24 property affected thereby immediately prior to the time the
25 merger is effective.

26 (3) Any action or proceeding pending by or against any
27 disappearing corporation or disappearing party to the merger may
28 be prosecuted to judgment, which shall bind the surviving party,
29 or the surviving party may be proceeded against or substituted in
30 its place.

31 (4) If a limited partnership or a general partnership is a party
32 to the merger, nothing in this section is intended to affect the
33 liability a general partner of a disappearing limited partnership or
34 general partnership may have in connection with the debts and
35 liabilities of the disappearing limited partnership or general
36 partnership existing prior to the time the merger is effective.

37 (j) (1) The merger of domestic corporations with foreign
38 corporations or foreign other business entities in a merger in
39 which one or more other business entities is a party shall comply
40 with subdivision (a) and this subdivision.

1 (2) If the surviving party is a domestic corporation or domestic
2 other business entity, the merger proceedings with respect to that
3 party and any domestic disappearing corporation shall conform
4 to the provisions of this section. If the surviving party is a foreign
5 corporation or foreign other business entity, then, subject to the
6 requirements of subdivision (c), and of Section 407 and Chapter
7 12 (commencing with Section 1200) and Chapter 13
8 (commencing with Section 1300), and, if applicable,
9 corresponding provisions of the Nonprofit Corporation Law or
10 the Consumer Cooperative Corporation Law, with respect to any
11 domestic constituent corporations, Chapter 13 (commencing with
12 Section 17600) of Title 2.5 with respect to any domestic
13 constituent limited liability companies, Article 6 (commencing
14 with Section 16601) of Chapter 5 of Title 2 with respect to any
15 domestic constituent general partnerships, and Article 7.6
16 (commencing with Section 15679.1) of Chapter 3 of Title 2 with
17 respect to any domestic constituent limited partnerships, the
18 merger proceedings may be in accordance with the laws of the
19 state or place of incorporation or organization of the surviving
20 party.

21 (3) If the surviving party is a domestic corporation or domestic
22 other business entity, the certificate of merger or the agreement
23 of merger with attachments shall be filed as provided in
24 subdivision (g) and thereupon, subject to subdivision (c) of
25 Section 110 or paragraph (2) of subdivision (g), as is applicable,
26 the merger shall be effective as to each domestic constituent
27 corporation and domestic constituent other business entity.

28 (4) If the surviving party is a foreign corporation or foreign
29 other business entity, the merger shall become effective in
30 accordance with the law of the jurisdiction in which the surviving
31 party is organized, but, except as provided in paragraph (5), the
32 merger shall be effective as to any domestic disappearing
33 corporation as of the time of effectiveness in the foreign
34 jurisdiction upon the filing in this state of a copy of the
35 agreement of merger with an officers' certificate of each
36 constituent foreign and domestic corporation and a certificate of
37 merger of each constituent other business entity attached, which
38 officers' certificates and certificates of merger shall conform to
39 the requirements of paragraph (1) of subdivision (g). If one or
40 more domestic other business entities is a disappearing party in a

1 merger pursuant to this subdivision in which a foreign other
2 business entity is the surviving entity, a certificate of merger
3 required by the laws under which that domestic other business
4 entity is organized, including subdivision (a) of Section 15678.4,
5 subdivision (b) of Section 16915, or subdivision (a) of Section
6 17552, as is applicable, shall also be filed at the same time as the
7 filing of the agreement of merger.

8 (5) If the date of the filing in this state pursuant to this
9 subdivision is more than six months after the time of the
10 effectiveness in the foreign jurisdiction, or if the powers of a
11 domestic disappearing corporation are suspended at the time of
12 effectiveness in the foreign jurisdiction, the merger shall be
13 effective as to the domestic disappearing corporation as of the
14 date of filing in this state.

15 (6) In a merger described in paragraph (3) or (4), each foreign
16 disappearing corporation that is qualified for the transaction of
17 intrastate business shall by virtue of the filing pursuant to this
18 subdivision, subject to subdivision (c) of Section 110,
19 automatically surrender its right to transact intrastate business in
20 this state. The filing of the agreement of merger or certificate of
21 merger, as is applicable, pursuant to this subdivision, by a
22 disappearing foreign other business entity registered for the
23 transaction of intrastate business in this state shall, by virtue of
24 that filing, subject to subdivision (c) of Section 110,
25 automatically cancels the registration for that foreign other
26 business entity, without the necessity of the filing of a certificate
27 of cancellation.

28 *SEC. 5.5. Section 1113 of the Corporations Code is amended*
29 *to read:*

30 1113. (a) Any one or more corporations may merge with one
31 or more other business entities (Section 174.5). One or more
32 domestic corporations (Section 167) not organized under this
33 division and one or more foreign corporations (Section 171) may
34 be parties to the merger. Notwithstanding the provisions of this
35 section, the merger of any number of corporations with any
36 number of other business entities may be effected only if:

37 (1) In a merger in which a domestic corporation not organized
38 under this division or a domestic other business entity is a party,
39 it is authorized by the laws under which it is organized to effect
40 the merger.

1 (2) In a merger in which a foreign corporation is a party, it is
2 authorized by the laws under which it is organized to effect the
3 merger.

4 (3) In a merger in which a foreign other business entity is a
5 party, it is authorized by the laws under which it is organized to
6 effect the merger.

7 (b) Each corporation and each other party which desires to
8 merge shall approve, and shall be a party to, an agreement of
9 merger. Other persons, including a parent party (Section 1200),
10 may be parties to the agreement of merger. The board of each
11 corporation which desires to merge, and, if required the
12 shareholders, shall approve the agreement of merger. The
13 agreement of merger shall be approved on behalf of each party
14 by those persons required to approve the merger by the laws
15 under which it is organized. The agreement of merger shall state:

16 (1) The terms and conditions of the merger.

17 (2) The name and place of incorporation or organization of
18 each party to the merger and the identity of the surviving party.

19 (3) The amendments, if any, subject to Sections 900 and 907,
20 to the articles of the surviving corporation, if applicable, to be
21 effected by the merger. If any amendment changes the name of
22 the surviving corporation, if applicable, the new name may be,
23 subject to subdivision (b) of Section 201, the same as or similar
24 to the name of a disappearing party to the merger.

25 (4) The manner of converting the shares of each constituent
26 corporation into shares, interests, or other securities of the
27 surviving party. If any shares of any constituent corporation are
28 not to be converted solely into shares, interests or other securities
29 of the surviving party, the agreement of merger shall state (i) the
30 cash, rights, securities, or other property which the holders of
31 those shares are to receive in exchange for the shares, which
32 cash, rights, securities, or other property may be in addition to or
33 in lieu of shares, interests or other securities of the surviving
34 party, or (ii) that the shares are canceled without consideration.

35 (5) Any other details or provisions required by the laws under
36 which any party to the merger is organized, including, if a public
37 benefit corporation or a religious corporation is a party to the
38 merger, Section 6019.1, or, if a mutual benefit corporation is a
39 party to the merger, Section 8019.1, or, if a consumer
40 cooperative corporation is a party to the merger, Section 12540.1,

1 or, if a domestic limited partnership is a party to the merger,
2 Section 15678.2 *or* 15911.06, or, if a domestic partnership is a
3 party to the merger, Section 16911, or, if a domestic limited
4 liability company is a party to the merger, Section 17551.

5 (6) Any other details or provisions as are desired, including,
6 without limitation, a provision for the payment of cash in lieu of
7 fractional shares or for any other arrangement with respect
8 thereto consistent with the provisions of Section 407.

9 (c) Each share of the same class or series of any constituent
10 corporation (other than the cancellation of shares held by a party
11 to the merger or its parent, or a wholly owned subsidiary of
12 either, in another constituent corporation) shall, unless all
13 shareholders of the class or series consent and except as provided
14 in Section 407, be treated equally with respect to any distribution
15 of cash, rights, securities, or other property. Notwithstanding
16 paragraph (4) of subdivision (b), the ~~nonredeemable~~
17 *unredeemable* common shares of a constituent corporation may
18 be converted only into ~~nonredeemable~~ *unredeemable* common
19 shares of a surviving corporation or a parent party (Section 1200)
20 or ~~nonredeemable~~ *unredeemable* equity securities of a surviving
21 party other than a corporation if another party to the merger or its
22 parent owns, directly or indirectly, prior to the merger shares of
23 that corporation representing more than 50 percent of the voting
24 power of that corporation, unless all of the shareholders of the
25 class consent and except as provided in Section 407.

26 (d) Notwithstanding its prior approval, an agreement of
27 merger may be amended prior to the filing of the agreement of
28 merger or the certificate of merger, as is applicable, if the
29 amendment is approved by the board of each constituent
30 corporation and, if the amendment changes any of the principal
31 terms of the agreement, by the outstanding shares (Section 152),
32 if required by Chapter 12 (commencing with Section 1200), in
33 the same manner as the original agreement of merger. If the
34 agreement of merger as so amended and approved is also
35 approved by each of the other parties to the agreement of merger,
36 the agreement of merger as so amended shall then constitute the
37 agreement of merger.

38 (e) The board of a constituent corporation may, in its
39 discretion, abandon a merger, subject to the contractual rights, if
40 any, of third parties, including other parties to the agreement of

1 merger, without further approval by the outstanding shares
2 (Section 152), at any time before the merger is effective.

3 (f) Each constituent corporation shall sign the agreement of
4 merger by its chairperson of the board, president or a vice
5 president and also by its secretary or an assistant secretary acting
6 on behalf of their respective corporations.

7 (g) (1) If the surviving party is a corporation or a foreign
8 corporation, or if a public benefit corporation (Section 5060), a
9 mutual benefit corporation (Section 5059), a religious
10 corporation (Section 5061), or a corporation organized under the
11 Consumer Cooperative Corporation Law (Section 12200) is a
12 party to the merger, after required approvals of the merger by
13 each constituent corporation through approval of the board
14 (Section 151) and any approval of the outstanding shares
15 (Section 152) required by Chapter 12 (commencing with Section
16 1200) and by the other parties to the merger, the surviving party
17 shall file a copy of the agreement of merger with an officers'
18 certificate of each constituent domestic and foreign corporation
19 attached stating the total number of outstanding shares or
20 membership interests of each class entitled to vote on the merger
21 (and identifying any other person or persons whose approval is
22 required), that the agreement of merger in the form attached or its
23 principal terms, as required, were approved by that corporation
24 by a vote of a number of shares or membership interests of each
25 class that equaled or exceeded the vote required, specifying each
26 class entitled to vote and the percentage vote required of each
27 class and, if applicable, by that other person or persons whose
28 approval is required, or that the merger agreement was entitled to
29 be and was approved by the board alone (as provided in Section
30 1201, in the case of corporations subject to that section). If equity
31 securities of a parent party (Section 1200) are to be issued in the
32 merger, the officers' certificate of that controlled party shall state
33 either that no vote of the shareholders of the parent party was
34 required or that the required vote was obtained. In lieu of an
35 officers' certificate, a certificate of merger, on a form prescribed
36 by the Secretary of State, shall be filed for each constituent other
37 business entity. The certificate of merger shall be executed and
38 acknowledged by each domestic constituent limited liability
39 company by all managers of the limited liability company (unless
40 a lesser number is specified in its articles ~~or~~ of organization or

1 operating agreement) and by each domestic constituent limited
2 partnership by all general partners (unless a lesser number is
3 provided in its certificate of limited partnership or partnership
4 agreement) and by each domestic constituent general partnership
5 by two partners (unless a lesser number is provided in its
6 partnership agreement) and by each foreign constituent limited
7 liability company by one or more managers and by each foreign
8 constituent general partnership or foreign constituent limited
9 partnership by one or more general partners, and by each
10 constituent reciprocal insurer by the chairperson of the board,
11 president, or vice president, and by the secretary or assistant
12 secretary, or, if a constituent reciprocal insurer has not appointed
13 those officers, by the chairperson of the board, president, or vice
14 president, and by the secretary or assistant secretary of the
15 constituent reciprocal insurer's attorney-in-fact, and by each
16 other party to the merger by those persons required or authorized
17 to execute the certificate of merger by the laws under which that
18 party is organized, specifying for that party the provision of law
19 or other basis for the authority of the signing persons. The
20 certificate of merger shall set forth, if a vote of the shareholders,
21 members, partners, or other holders of interests of the constituent
22 other business entity was required, a statement setting forth the
23 total number of outstanding interests of each class entitled to vote
24 on the merger and that the agreement of merger in the form
25 attached or its principal terms, as required, were approved by a
26 vote of the number of interests of each class that equaled or
27 exceeded the vote required, specifying each class entitled to vote
28 and the percentage vote required of each class, and any other
29 information required to be set forth under the laws under which
30 the constituent other business entity is organized, including, if a
31 domestic limited partnership is a party to the merger, subdivision
32 (a) of Section 15678.4 *or subdivision (b) of Section 15911.08*, if
33 a domestic partnership is a party to the merger, subdivision (b) of
34 Section 16915, and, if a domestic limited liability company is a
35 party to the merger, subdivision (a) of Section 17552. The
36 certificate of merger for each constituent foreign other business
37 entity, if any, shall also set forth the statutory or other basis under
38 which that foreign other business entity is authorized by the laws
39 under which it is organized to effect the merger. The merger and
40 any amendment of the articles of the surviving corporation, if

1 applicable, contained in the agreement of merger shall be
2 effective upon filing of the agreement of merger with an officer's
3 certificate of each constituent domestic and foreign corporation
4 and a certificate of merger for each constituent other business
5 entity, subject to subdivision (c) of Section 110 and subject to the
6 provisions of subdivision (j), and the several parties thereto shall
7 be one entity. ~~The agreement of merger shall not be filed,~~
8 ~~however, until there has been filed by or on behalf of each party~~
9 ~~to the merger taxed under the Bank and Corporation Tax Law,~~
10 ~~the existence of which is terminated by the merger, the certificate~~
11 ~~of satisfaction of the Franchise Tax Board that all taxes imposed~~
12 ~~by that law have been paid or secured.~~ If a domestic reciprocal
13 insurer organized after 1974 to provide medical malpractice
14 insurance is a party to the merger, the agreement of merger or
15 certificate of merger shall not be filed until there has been filed
16 the certificate issued by the Insurance Commissioner approving
17 the merger pursuant to Section 1555 of the Insurance Code. The
18 Secretary of State may certify a copy of the agreement of merger
19 separate from the officers' certificates and certificates of merger
20 attached thereto.

21 (2) If the surviving entity is an other business entity, and no
22 public benefit corporation (Section 5060), mutual benefit
23 corporation (Section 5059), religious corporation (Section 5061),
24 or corporation organized under the Consumer Cooperative
25 Corporation Law (Section 12200) is a party to the merger, after
26 required approvals of the merger by each constituent corporation
27 through approval of the board (Section 151) and any approval of
28 the outstanding shares (Section 152) required by Chapter 12
29 (commencing with Section 1200) and by the other parties to the
30 merger, the parties to the merger shall file a certificate of merger
31 in the office of, and on a form prescribed by, the Secretary of
32 State. The certificate of merger shall be executed and
33 acknowledged by each constituent domestic and foreign
34 corporation by its chairperson of the board, president or a vice
35 president and also by its secretary or an assistant secretary and by
36 each domestic constituent limited liability company by all
37 managers of the limited liability company (unless a lesser
38 number is specified in its articles of organization or operating
39 agreement) and by each domestic constituent limited partnership
40 by all general partners (unless a lesser number is provided in its

1 certificate of limited partnership or partnership agreement) and
2 by each domestic constituent general partnership by two partners
3 (unless a lesser number is provided in its partnership agreement)
4 and by each foreign constituent limited liability company by one
5 or more managers and by each foreign constituent general
6 partnership or foreign constituent limited partnership by one or
7 more general partners, and by each constituent reciprocal insurer
8 by the chairperson of the board, president, or vice president, and
9 by the secretary or assistant secretary, or, if a constituent
10 reciprocal insurer has not appointed those officers, by the
11 chairperson of the board, president, or vice president, and by the
12 secretary or assistant secretary of the constituent reciprocal
13 insurer's attorney-in-fact. The certificate of merger shall be
14 signed by each other party to the merger by those persons
15 required or authorized to execute the certificate of merger by the
16 laws under which that party is organized, specifying for that
17 party the provision of law or other basis for the authority of the
18 signing persons. The certificate of merger shall set forth all of the
19 following:

20 (A) The name, place of incorporation or organization, and the
21 Secretary of State's file number, if any, of each party to the
22 merger, separately identifying the disappearing parties and the
23 surviving party.

24 (B) If the approval of the outstanding shares of a constituent
25 corporation was required by Chapter 12 (commencing with
26 Section 1200), a statement setting forth the total number of
27 outstanding shares of each class entitled to vote on the merger
28 and that the principal terms of the agreement of merger were
29 approved by a vote of the number of shares of each class entitled
30 to vote and the percentage vote required of each class.

31 (C) The future effective date or time, not more than 90 days
32 subsequent to the date of filing of the merger, if the merger is not
33 to be effective upon the filing of the certificate of merger with
34 the office of the Secretary of State.

35 (D) A statement, by each party to the merger which is a
36 domestic corporation not organized under this division, a foreign
37 corporation, or an other business entity, of the statutory or other
38 basis under which that party is authorized by the laws under
39 which it is organized to effect the merger.

1 (E) Any other information required to be stated in the
2 certificate of merger by the laws under which each party to the
3 merger is organized, including, if a domestic limited liability
4 company is a party to the merger, subdivision (a) of Section
5 17552, if a domestic partnership is a party to the merger,
6 subdivision (b) of Section 16915, and, if a domestic limited
7 partnership is a party to the merger, subdivision (a) of Section
8 15678.4 *or subdivision (b) of Section 15911.08.*

9 (F) Any other details or provisions that may be desired.

10 Unless a future effective date or time is provided in a
11 certificate of merger, in which event the merger shall be effective
12 at that future effective date or time, a merger shall be effective
13 upon the filing of the certificate of merger in the office of the
14 Secretary of State and the several parties thereto shall be one
15 entity. ~~The certificate of merger shall not be filed, however, until~~
16 ~~there has been filed by or on behalf of each party to the merger~~
17 ~~that is taxed under the Bank and Corporation Tax Law, the~~
18 ~~existence of which is terminated by the merger, the certificate of~~
19 ~~satisfaction of the Franchise Tax Board that all taxes imposed by~~
20 ~~the Bank and Corporation Tax Law have been paid or secured.~~
21 The surviving other business entity shall keep a copy of the
22 agreement of merger at its principal place of business which, for
23 purposes of this subdivision, shall be the office referred to in
24 Section 17057 if a domestic limited liability company, at the
25 business address specified in paragraph (5) of subdivision (a) of
26 Section 17552 if a foreign limited liability company, at the office
27 referred to in subdivision (a) of Section 16403 if a domestic
28 general partnership, at the business address specified in
29 subdivision (f) of Section 16911 if a foreign partnership, at the
30 office referred to in subdivision (a) of Section 15614 *or in*
31 *subdivision (a) of Section 15901.14* if a domestic limited
32 partnership, or at the business address specified in paragraph (5)
33 of subdivision (a) of Section 15678.4 *or paragraph (3) of*
34 *subdivision (a) of Section 15909.02* if a foreign limited
35 partnership. Upon the request of a holder of equity securities of a
36 party to the merger, a person with authority to do so on behalf of
37 the surviving other business entity shall promptly deliver to that
38 holder, a copy of the agreement of merger. A waiver by that
39 holder of the rights provided in the foregoing sentence shall be
40 unenforceable. If a domestic reciprocal insurer organized after

1 1974 to provide medical malpractice insurance is a party to the
2 merger the agreement of merger or certificate of merger shall not
3 be filed until there has been filed the certificate issued by the
4 Insurance Commissioner approving the merger in accordance
5 with Section 1555 of the Insurance Code.

6 (h) (1) A copy of an agreement of merger certified on or after
7 the effective date by an official having custody thereof has the
8 same force in evidence as the original and, except as against the
9 state, is conclusive evidence of the performance of all conditions
10 precedent to the merger, the existence on the effective date of the
11 surviving party to the merger and the performance of the
12 conditions necessary to the adoption of any amendment to the
13 articles, if applicable, contained in the agreement of merger.

14 (2) For all purposes for a merger in which the surviving entity
15 is a domestic other business entity and the filing of a certificate
16 of merger is required by paragraph (2) of subdivision (g), a copy
17 of the certificate of merger duly certified by the Secretary of
18 State is conclusive evidence of the merger of the constituent
19 corporations, either by themselves or together with the other
20 parties to the merger, into the surviving other business entity.

21 (i) (1) Upon a merger pursuant to this section, the separate
22 existences of the disappearing parties to the merger cease and the
23 surviving party to the merger shall succeed, without other
24 transfer, to all the rights and property of each of the disappearing
25 parties to the merger and shall be subject to all the debts and
26 liabilities of each in the same manner as if the surviving party to
27 the merger had itself incurred them.

28 (2) All rights of creditors and all liens upon the property of
29 each of the constituent corporations and other parties to the
30 merger shall be preserved unimpaired, provided that those liens
31 upon property of a disappearing party shall be limited to the
32 property affected thereby immediately prior to the time the
33 merger is effective.

34 (3) Any action or proceeding pending by or against any
35 disappearing corporation or disappearing party to the merger may
36 be prosecuted to judgment, which shall bind the surviving party,
37 or the surviving party may be proceeded against or substituted in
38 its place.

39 (4) If a limited partnership or a general partnership is a party
40 to the merger, nothing in this section is intended to affect the

1 liability a general partner of a disappearing limited partnership or
2 general partnership may have in connection with the debts and
3 liabilities of the disappearing limited partnership or general
4 partnership existing prior to the time the merger is effective.

5 (j) (1) The merger of domestic corporations with foreign
6 corporations or foreign other business entities in a merger in
7 which one or more other business entities is a party shall comply
8 with subdivision (a) and this subdivision.

9 (2) If the surviving party is a domestic corporation or domestic
10 other business entity, the merger proceedings with respect to that
11 party and any domestic disappearing corporation shall conform
12 to the provisions of this section. If the surviving party is a foreign
13 corporation or foreign other business entity, then, subject to the
14 requirements of subdivision (c), and of Section 407 and Chapter
15 12 (commencing with Section 1200) and Chapter 13
16 (commencing with Section 1300), and, if applicable,
17 corresponding provisions of the Nonprofit Corporation Law or
18 the Consumer Cooperative Corporation Law, with respect to any
19 domestic constituent corporations, Chapter 13 (commencing with
20 Section 17600) of Title 2.5 with respect to any domestic
21 constituent limited liability companies, Article 6 (commencing
22 with Section 16601) of Chapter 5 of Title 2 with respect to any
23 domestic constituent general partnerships, and Article 7.6
24 (commencing with Section 15679.1) of Chapter 3 of Title 2 with
25 respect to any domestic constituent limited partnerships, the
26 merger proceedings may be in accordance with the laws of the
27 state or place of incorporation or organization of the surviving
28 party.

29 (3) If the surviving party is a domestic corporation or domestic
30 other business entity, the certificate of merger or the agreement
31 of merger with attachments shall be filed as provided in
32 subdivision (g) and thereupon, subject to subdivision (c) of
33 Section 110 or paragraph (2) of subdivision (g), as is applicable,
34 the merger shall be effective as to each domestic constituent
35 corporation and domestic constituent other business entity.

36 (4) If the surviving party is a foreign corporation or foreign
37 other business entity, the merger shall become effective in
38 accordance with the law of the jurisdiction in which the surviving
39 party is organized, but, except as provided in paragraph (5), the
40 merger shall be effective as to any domestic disappearing

1 corporation as of the time of effectiveness in the foreign
2 jurisdiction upon the filing in this state of a copy of the
3 agreement of merger with an officers' certificate of each
4 constituent foreign and domestic corporation and a certificate of
5 merger of each constituent other business entity attached, which
6 officers' certificates and certificates of merger shall conform to
7 the requirements of paragraph (1) of subdivision (g). If one or
8 more domestic other business entities is a disappearing party in a
9 merger pursuant to this subdivision in which a foreign other
10 business entity is the surviving entity, a certificate of merger
11 required by the laws under which that domestic other business
12 entity is organized, including subdivision (a) of Section 15678.4,
13 *subdivision (b) of Section 15911.08*, subdivision (b) of Section
14 16915, or subdivision (a) of Section 17552, as is applicable, shall
15 also be filed at the same time as the filing of the agreement of
16 merger.

17 (5) If the date of the filing in this state pursuant to this
18 subdivision is more than six months after the time of the
19 effectiveness in the foreign jurisdiction, or if the powers of a
20 domestic disappearing corporation are suspended at the time of
21 effectiveness in the foreign jurisdiction, the merger shall be
22 effective as to the domestic disappearing corporation as of the
23 date of filing in this state.

24 (6) In a merger described in paragraph (3) or (4), each foreign
25 disappearing corporation that is qualified for the transaction of
26 intrastate business shall by virtue of the filing pursuant to this
27 subdivision, subject to subdivision (c) of Section 110,
28 automatically surrender its right to transact intrastate business in
29 this state. The filing of the agreement of merger or certificate of
30 merger, as is applicable, pursuant to this subdivision, by a
31 disappearing foreign other business entity registered for the
32 transaction of intrastate business in this state shall, by virtue of
33 that filing, subject to subdivision (c) of Section 110,
34 automatically cancels the registration for that foreign other
35 business entity, without the necessity of the filing of a certificate
36 of cancellation.

37 ~~(7) A certificate of satisfaction of the Franchise Tax Board for~~
38 ~~each disappearing party to the merger shall be filed when~~
39 ~~required by subdivision (g) or when required by Section 23334 of~~
40 ~~the Revenue and Taxation Code.~~

1 SEC. 6. Section 1155 of the Corporations Code is amended to
2 read:

3 1155. (a) To convert a corporation:

4 (1) If the corporation is converting into a domestic limited
5 partnership, a statement of conversion shall be completed on the
6 certificate of limited partnership for the converted entity.

7 (2) If the corporation is converting into a domestic partnership,
8 a statement of conversion shall be completed on the statement of
9 partnership authority for the converted entity, or if no statement
10 of partnership authority is filed then a certificate of conversion
11 shall be filed separately.

12 (3) If the corporation is converting into a domestic limited
13 liability company, a statement of conversion shall be completed
14 on the articles of organization for the converted entity.

15 (b) Any statement or certificate of conversion of a converting
16 corporation shall be executed and acknowledged by those
17 officers of the converting corporation as would be required to
18 sign an officers' certificate (Section 173), and shall set forth all
19 of the following:

20 (1) The name and the Secretary of State's file number of the
21 converting corporation.

22 (2) A statement of the total number of outstanding shares of
23 each class entitled to vote on the conversion, that the principal
24 terms of the plan of conversion were approved by a vote of the
25 number of shares of each class which equaled or exceeded the
26 vote required under Section 1152, specifying each class entitled
27 to vote and the percentage vote required of each class.

28 (3) The name, form, and jurisdiction of organization of the
29 converted entity.

30 (c) For the purposes of this chapter, the certificate of
31 conversion shall be on a form prescribed by the Secretary of
32 State.

33 (d) The filing with the Secretary of State of a statement of
34 conversion on an organizational document or a certificate of
35 conversion as set forth in subdivision (a) shall have the effect of
36 the filing of a certificate of dissolution by the converting
37 corporation and no converting corporation that has made the
38 filing is required to file a certificate of election under Section
39 1901 or a certificate of dissolution under Section 1905 as a result
40 of that conversion.

(e) The Secretary of State shall notify the Franchise Tax Board and shall notify the Franchise Tax Board of the conversion. Upon the effectiveness of a conversion pursuant to this chapter, a converted entity that is a domestic partnership, domestic limited partnership or domestic limited liability company shall be deemed to have assumed the liability of the converting corporation (1) to prepare and file or cause to be prepared and filed all tax and information returns otherwise required of the converting corporation under the Bank and Corporation Tax Law (Part 11 (commencing with Section 23001) of Division 2 of the Revenue and Taxation Code) and (2) to pay any tax liability determined to be due pursuant to that law.

SEC. 7. Section 1808 of the Corporations Code is amended to read:

1808. (a) Upon the final settlement of the accounts of the directors or other persons appointed pursuant to Section 1805 and the determination that the corporation's affairs are in condition for it to be dissolved, the court may make an order declaring the corporation duly wound up and dissolved. The order shall declare:

(1) That the corporation has been duly wound up, that a final franchise tax return, as described by Section 23332 of the Revenue and Taxation Code, has been filed with the Franchise Tax Board as required under Part 10.2 (commencing with Section 18401) of Division 2 of the Revenue and Taxation Code, and that its known debts and liabilities have been paid or adequately provided for, or that those debts and liabilities have been paid as far as its assets permitted, as the case may be. If there are known debts or liabilities for payment of which adequate provision has been made, the order shall state what provision has been made, setting forth the name and address of the corporation, person or governmental agency that has assumed or guaranteed the payment, or the name and address of the depository with which deposit has been made or such other information as may be necessary to enable the creditor or other person to whom payment is to be made to appear and claim payment of the debt or liability.

(2) That its known assets have been distributed to the persons entitled thereto or that it acquired no known assets, as the case may be.

1 (3) That the accounts of directors or such other persons have
2 been settled and that they are discharged from their duties and
3 liabilities to creditors and shareholders.

4 (4) That the corporation is dissolved.

5 The court may make such additional orders and grant such
6 further relief as it deems proper upon the evidence submitted.

7 (b) Upon the making of the order declaring the corporation
8 dissolved, corporate existence shall cease except for the purposes
9 of further winding up if needed; and the directors or such other
10 persons shall be discharged from their duties and liabilities,
11 except in respect to completion of the winding up.

12 SEC. 8. Section 1809 of the Corporations Code is amended to
13 read:

14 1809. Whenever a corporation is dissolved or its existence
15 forfeited by order, decree or judgment of a court, a copy of the
16 order, decree or judgment, certified by the clerk of court, shall
17 forthwith be filed in the office of the Secretary of State. The
18 Secretary of State shall notify the Franchise Tax Board of the
19 dissolution.

20 SEC. 9. Section 1900.5 of the Corporations Code is amended
21 to read:

22 1900.5. (a) Notwithstanding any other provision of this
23 division, when a corporation has not issued shares, a majority of
24 the directors, or, if no directors have been named in the articles
25 or been elected, the incorporator or a majority of the
26 incorporators may sign and verify a certificate of dissolution
27 stating the following:

28 (1) That the certificate of dissolution is being filed within 12
29 months from the date the articles of incorporation were filed.

30 (2) That the corporation does not have any debts or other
31 liabilities, except as provided in paragraph (3).

32 (3) That the tax liability will be satisfied on a taxes paid basis
33 or that a person or corporation or other business entity assumes
34 the tax liability, if any, of the dissolving corporation and is
35 responsible for additional corporate taxes, if any, that are
36 assessed and that become due after the date of the assumption of
37 the tax liability.

38 (4) That a final franchise tax return, as described by Section
39 23332 of the Revenue and Taxation Code, has been or will be
40 filed with the Franchise Tax Board as required under Part 10.2

1 (commencing with Section 18401) of Division 2 of the Revenue
2 and Taxation Code.

3 (5) That the corporation has not conducted any business from
4 the time of the filing of the articles of incorporation.

5 (6) That the known assets of the corporation remaining after
6 payment of, or adequately providing for, known debts and
7 liabilities have been distributed to the persons entitled thereto or
8 that the corporation acquired no known assets, as the case may
9 be.

10 (7) That a majority of the directors, or, if no directors have
11 been named in the articles or been elected, the incorporator or a
12 majority of the incorporators authorized the dissolution and
13 elected to dissolve the corporation.

14 (8) That the corporation has not issued any shares, and if the
15 corporation has received payments for shares from investors,
16 those payments have been returned to those investors.

17 (9) That the corporation is dissolved.

18 (b) A certificate of dissolution signed and verified pursuant to
19 subdivision (a) shall be filed with the Secretary of State. The
20 Secretary of State shall notify the Franchise Tax Board of the
21 dissolution.

22 (c) Upon filing a certificate of dissolution pursuant to
23 subdivision (b), a corporation shall be dissolved and its powers,
24 rights, and privileges shall cease.

25 SEC. 10. Section 1905 of the Corporations Code is amended
26 to read:

27 1905. (a) When a corporation has been completely wound up
28 without court proceedings therefor, a majority of the directors
29 then in office shall sign and verify a certificate of dissolution
30 stating:

31 (1) That the corporation has been completely wound up.

32 (2) That its known debts and liabilities have been actually
33 paid, or adequately provided for, or paid or adequately provided
34 for as far as its assets permitted, or that it has incurred no known
35 debts or liabilities, as the case may be. If there are known debts
36 or liabilities for payment of which adequate provision has been
37 made, the certificate shall state what provision has been made,
38 setting forth the name and address of the corporation, person or
39 governmental agency that has assumed or guaranteed the
40 payment, or the name and address of the depositary with which

1 deposit has been made or any other information that may be
2 necessary to enable the creditor or other person to whom
3 payment is to be made to appear and claim payment of the debt
4 or liability.

5 (3) That its known assets have been distributed to the persons
6 entitled thereto or that it acquired no known assets, as the case
7 may be.

8 (4) That the corporation is dissolved.

9 (5) If no certificate of election is to be filed pursuant to
10 subdivision (c) of Section 1901, that the election to dissolve was
11 made by the vote of all the outstanding shares.

12 (6) That a final franchise tax return, as described by Section
13 23332 of the Revenue and Taxation Code, has been or will be
14 filed with the Franchise Tax Board, as required under Part 10.2
15 (commencing with Section 18401) of Division 2 of the Revenue
16 and Taxation Code.

17 (b) The certificate of dissolution shall be filed with the
18 Secretary of State and thereupon the corporate powers, rights,
19 and privileges of the corporation shall cease. The Secretary of
20 State shall notify the Franchise Tax Board of the dissolution.

21 SEC. 11. Section 1905.1 is added to the Corporations Code,
22 to read:

23 1905.1. If a corporation has filed a certificate of dissolution
24 with the Secretary of State on or after January 1, 1992, and
25 before the effective date of the act adding this section, pursuant
26 to Section 1905, prior to its amendment by the act adding this
27 section, and the Franchise Tax Board has not, as of that effective
28 date, made the determination required by subdivision (c) of
29 Section 1905, prior to its amendment by the act adding this
30 section, then the corporation shall be dissolved as of the date of
31 filing the certificate of dissolution and thereupon its corporate
32 existence shall cease.

33 SEC. 12. Section 2010 of the Corporations Code is amended
34 to read:

35 2010. (a) A corporation which is dissolved nevertheless
36 continues to exist for the purpose of winding up its affairs,
37 prosecuting and defending actions by or against it and enabling it
38 to collect and discharge obligations, dispose of and convey its
39 property and collect and divide its assets, but not for the purpose

1 of continuing business except so far as necessary for the winding
2 up thereof.

3 (b) No action or proceeding to which a corporation is a party
4 abates by the dissolution of the corporation or by reason of
5 proceedings for winding up and dissolution thereof.

6 (c) Any assets inadvertently or otherwise omitted from the
7 winding up continue in the dissolved corporation for the benefit
8 of the persons entitled thereto upon dissolution of the corporation
9 and on realization shall be distributed accordingly.

10 ~~(d) For the purpose of this section, a dissolved corporation~~
11 ~~includes a corporation that has filed a certificate of dissolution on~~
12 ~~or after January 1, 1992, pursuant to Section 1905.~~

13 SEC. 13. Section 2011 of the Corporations Code is amended
14 to read:

15 2011. (a) (1) Causes of action against a dissolved
16 corporation, whether arising before or after the dissolution of the
17 corporation, may be enforced against any of the following:

18 (A) Against the dissolved corporation, to the extent of its
19 undistributed assets, including, without limitation, any insurance
20 assets held by the corporation that may be available to satisfy
21 claims.

22 (B) If any of the assets of the dissolved corporation have been
23 distributed to shareholders, against shareholders of the dissolved
24 corporation to the extent of their pro rata share of the claim or to
25 the extent of the corporate assets distributed to them upon
26 dissolution of the corporation, whichever is less.

27 A shareholder's total liability under this section may not
28 exceed the total amount of assets of the dissolved corporation
29 distributed to the shareholder upon dissolution of the corporation.

30 (2) Except as set forth in subdivision (c), all causes of action
31 against a shareholder of a dissolved corporation arising under this
32 section are extinguished unless the claimant commences a
33 proceeding to enforce the cause of action against that shareholder
34 of a dissolved corporation prior to the earlier of the following:

35 (A) The expiration of the statute of limitations applicable to
36 the cause of action.

37 (B) Four years after the effective date of the dissolution of the
38 corporation.

39 (3) As a matter of procedure only, and not for purposes of
40 determining liability, shareholders of the dissolved corporation

1 may be sued in the corporate name of the corporation upon any
2 cause of action against the corporation. This section does not
3 affect the rights of the corporation or its creditors under Section
4 2009, or the rights, if any, of creditors under the Uniform
5 Fraudulent Transfer Act, which may arise against the
6 shareholders of a corporation.

7 (4) This subdivision applies to corporations dissolved on and
8 after January 1, 1992. Corporations dissolved prior to that date
9 are subject to the law in effect prior to that date.

10 (b) Summons or other process against such a corporation may
11 be served by delivering a copy thereof to an officer, director or
12 person having charge of its assets or, if no such person can be
13 found, to any agent upon whom process might be served at the
14 time of dissolution. If none of such persons can be found with
15 due diligence and it is so shown by affidavit to the satisfaction of
16 the court, then the court may make an order that summons or
17 other process be served upon the dissolved corporation by
18 personally delivering a copy thereof, together with a copy of the
19 order, to the Secretary of State or an assistant or deputy secretary
20 of state. Service in this manner is deemed complete on the 10th
21 day after delivery of the process to the Secretary of State.

22 (c) Every such corporation shall survive and continue to exist
23 indefinitely for the purpose of being sued in any quiet title action.
24 Any judgment rendered in any such action shall bind each and all
25 of its shareholders or other persons having any equity or other
26 interest in such corporation, to the extent of their interest therein,
27 and such action shall have the same force and effect as an action
28 brought under the provisions of Sections 410.50 and 410.60 of
29 the Code of Civil Procedure. Service of summons or other
30 process in any such action may be made as provided in Chapter 4
31 (commencing with Section 413.10) of Title 5 of Part 2 of the
32 Code of Civil Procedure or as provided in subdivision (b).

33 (d) Upon receipt of such process and the fee therefor, the
34 Secretary of State forthwith shall give notice to the corporation
35 as provided in Section 1702.

36 ~~(e) For the purpose of this section, a dissolved corporation~~
37 ~~includes a corporation that has filed a certificate of dissolution on~~
38 ~~or after January 1, 1992, pursuant to Section 1905.~~

39 (f)

1 (e) For purposes of Article 4 (commencing with Section
2 19071) of Chapter 4 of Part 10.2 of Division 2 of the Revenue
3 and Taxation Code, the liability described in this section shall be
4 considered a liability at law with respect to a dissolved
5 corporation.

6 SEC. 14. Section 2112 of the Corporations Code is amended
7 to read:

8 2112. (a) Subject to Section 2113, a foreign corporation
9 which has qualified to transact intrastate business may surrender
10 its right to engage in that business within this state by filing a
11 certificate of surrender signed by a corporate officer stating:

12 (1) The name of the corporation as shown on the records of the
13 Secretary of State, and the state or place of incorporation or
14 organization.

15 (2) That it revokes its designation of agent for service of
16 process.

17 (3) That it surrenders its authority to transact intrastate
18 business.

19 (4) That it consents that process against it in any action upon
20 any liability or obligation incurred within this state prior to the
21 filing of the certificate of withdrawal may be served upon the
22 Secretary of State.

23 (5) A post office address to which the Secretary of State may
24 mail a copy of any process against the corporation that is served
25 upon the Secretary of State, which address or the name to which
26 the process should be sent may be changed from time to time by
27 filing a statement signed by a corporate officer stating the new
28 address or name or both.

29 (6) ~~That~~ *Except in the case of a foreign association, that a*
30 final franchise tax return, as described by Section 23332 of the
31 Revenue and Taxation Code, has been or will be filed with the
32 Franchise Tax Board, as required under Part 10.2 (commencing
33 with Section 18401) of Division 2 of the Revenue and Taxation
34 Code.

35 (b) The Secretary of State shall notify the Franchise Tax Board
36 of the surrender.

37 SEC. 15. Section 6014 of the Corporations Code is amended
38 to read:

39 6014. After approval of a merger by the board and any
40 approval by the members (Section 5034) or other person or

persons required by Section 6012, the surviving corporation shall file a copy of the agreement of merger with an officers' certificate of each constituent corporation attached stating the total number of memberships of each class entitled to vote on the merger, identifying any other person or persons whose approval is required, and stating that the principal terms of the agreement in the form attached were duly approved by the required vote of the members and (if applicable) such other person or persons. The merger and any amendment of the articles of the surviving corporation contained in the merger agreement shall thereupon be effective (subject to subdivision (c) of Section 5008 and subject to the provisions of Section 6018) and the several parties thereto shall be one surviving corporation. The Secretary of State may certify a copy of the merger agreement separate from the officers' certificates attached thereto.

SEC. 16. Section 6018 of the Corporations Code is amended to read:

6018. (a) Subject to the provisions of Section 6010, the merger of any number of corporations with any number of foreign corporations may be effected if the foreign corporations are authorized by the laws under which they are formed to effect the merger. The surviving corporation may be any one of the constituent corporations and shall continue to exist under the laws of the state or place of its incorporation.

(b) If the surviving corporation is a public benefit corporation or a religious corporation, the merger proceedings with respect to that corporation and any disappearing corporation shall conform to the provisions of this chapter governing the merger of corporations, but if the surviving corporation is a foreign corporation, then, subject to the requirements of subdivision (d) and Section 6012, the merger proceedings may be in accordance with the laws of the state or place of incorporation of the surviving corporation.

(c) If the surviving corporation is a public benefit corporation or a religious corporation, the agreement and the officers' certificate of each constituent corporation shall be filed as provided in Section 6014 and thereupon, subject to subdivision (c) of Section 5008, the merger shall be effective as to each corporation; and each foreign disappearing corporation that is qualified for the transaction of intrastate business shall by virtue

1 of the filing automatically surrender its right to transact intrastate
2 business.

3 (d) If the surviving corporation is a foreign corporation, the
4 merger shall become effective in accordance with the law of the
5 jurisdiction in which it is organized, but shall be effective as to
6 any disappearing corporation as of the time of effectiveness in
7 the foreign jurisdiction upon the filing in this state as required by
8 this subdivision. There shall be filed as to the domestic
9 disappearing corporation or corporations the documents
10 described in any one of the following paragraphs:

11 (1) A copy of the agreement, certificate, or other document
12 filed by the surviving foreign corporation in the state or place of
13 its incorporation for the purpose of effecting the merger, which
14 copy shall be certified by the public officer having official
15 custody of the original.

16 (2) An executed counterpart of the agreement, certificate, or
17 other document filed by the surviving corporation in the state or
18 place of its incorporation for the purpose of effecting the merger.

19 (3) A copy of the agreement of merger with an officers'
20 certificate of the surviving foreign corporation and of each
21 constituent domestic corporation attached, which officers'
22 certificates shall conform to the requirements of Section 6014.

23 (e) If the date of the filing in this state pursuant to subdivision
24 (d) is more than six months after the time of the effectiveness in
25 the foreign jurisdiction, or if the powers of the domestic
26 corporation are suspended at the time of effectiveness in the
27 foreign jurisdiction, the merger shall be effective as to the
28 domestic disappearing corporation or corporations as of the date
29 of filing in this state. Each foreign disappearing corporation that
30 is qualified for the transaction of intrastate business shall
31 automatically by the filing pursuant to subdivision (d) surrender
32 its right to transact intrastate business as of the date of filing in
33 this state regardless of the time of effectiveness as to a domestic
34 disappearing corporation.

35 SEC. 17. Section 6019.1 of the Corporations Code is
36 amended to read:

37 6019.1. (a) Subject to the provisions of Sections 6010 and
38 9640, any one or more corporations may merge with one or more
39 other business entities (Section 5063.5). One or more other
40 domestic corporations and foreign corporations (Section 5053)

1 may be parties to the merger. Notwithstanding the provisions of
2 this section, such a merger may be effected only if:

3 (1) In a merger in which a domestic corporation or domestic
4 other business entity is a party, it is authorized by the laws under
5 which it is organized to effect the merger.

6 (2) In a merger in which a foreign corporation is a party, it is
7 authorized by the laws under which it is organized to effect the
8 merger.

9 (3) In a merger in which a foreign other business entity is a
10 party, it is authorized by the laws under which it is organized to
11 effect the merger.

12 (b) Each corporation and each other party which desires to
13 merge shall approve an agreement of merger. The board and the
14 members (Section 5034) of each corporation which desires to
15 merge, and each other person or persons, if any, whose approval
16 of an amendment of the articles of that corporation is required by
17 the articles or bylaws shall approve the agreement of merger. The
18 agreement of merger shall be approved on behalf of each other
19 party by those persons authorized or required to approve the
20 merger by the laws under which it is organized. The parties
21 desiring to merge shall be parties to the agreement of merger and
22 other persons, including a parent party (Section 5064.5), may be
23 parties to the agreement of merger. The agreement of merger
24 shall state all of the following:

25 (1) The terms and conditions of the merger.

26 (2) The name and place of incorporation or organization of
27 each party and the identity of the surviving party.

28 (3) The amendments, if any, subject to Sections 5810 and
29 5816, to the articles of the surviving corporation, if applicable, to
30 be effected by the merger. The name of the surviving corporation
31 may be, subject to subdivision (b) of Section 5122 and
32 subdivision (b) of Section 9122, the same as, or similar to, the
33 name of a disappearing party to the merger.

34 (4) The manner, if any, of converting the memberships of each
35 of the constituent corporations into shares, memberships,
36 interests, or other securities of the surviving party; and, if any
37 memberships of any of the constituent corporations are not to be
38 converted solely into shares, memberships, interests, or other
39 securities of the surviving party, the cash, rights, securities, or
40 other property which the holders of those memberships are to

1 receive in exchange for the memberships, which cash, rights,
2 securities, or other property may be in addition to, or in lieu of,
3 shares, memberships, interests, or other securities of the
4 surviving corporation or surviving other business entity.

5 (5) Any other details or provisions required by the laws under
6 which any party to the merger is organized, including, if a
7 domestic limited partnership is a party to the merger, subdivision
8 (a) of Section 15678.2, or, if a domestic general partnership is a
9 party to the merger, subdivision (a) of Section 16911, or, if a
10 domestic limited liability company is a party to the merger,
11 subdivision (a) of Section 17551.

12 (6) Any other details or provisions as are desired.

13 (c) Notwithstanding its prior approval, an agreement of merger
14 may be amended prior to the filing of the agreement of merger if
15 the amendment is approved by each constituent corporation in
16 the same manner as the original agreement of merger. If the
17 agreement of merger as so amended and approved is also
18 approved by each of the other parties to the agreement of merger,
19 as so amended it shall then constitute the agreement of merger.

20 (d) The board of a constituent corporation may, in its
21 discretion, abandon a merger, subject to the contractual rights, if
22 any, of third parties, including other parties to the agreement of
23 merger, without further approval by the members (Section 5034)
24 or other persons, at any time before the merger is effective.

25 (e) Each constituent corporation shall sign the agreement of
26 merger by its chairperson of the board, president or a vice
27 president, and also by its secretary or an assistant secretary acting
28 on behalf of their respective corporations.

29 (f) After required approvals of the merger by each constituent
30 corporation and each other party to the merger, the surviving
31 party shall file a copy of the agreement of merger with an
32 officers' certificate of each constituent domestic and foreign
33 corporation attached stating the total number of outstanding
34 shares or membership interests of each class, if any, entitled to
35 vote on the merger (and identifying any other person or persons
36 whose approval is required), that the agreement of merger in the
37 form attached or its principal terms, as required, were approved
38 by that corporation by a vote of a number of shares or
39 membership interests of each class entitled to vote, if any, which
40 equaled or exceeded the vote required, specifying each class

1 entitled to vote and the percentage vote required of each class,
2 and, if applicable, by that other person or persons whose
3 approval is required.

4 If equity securities of a parent party (Section 5064.5) are to be
5 issued in the merger, the officers' certificate or certificate of
6 merger of the controlled party shall state either that no vote of the
7 shareholders of the parent party was required or that the required
8 vote was obtained. The merger and any amendment of the
9 articles of the surviving corporation, if applicable, contained in
10 the agreement of merger shall be effective upon the filing of the
11 agreement of merger, subject to the provisions of subdivision (h).
12 If a domestic reciprocal insurer organized after 1974 to provide
13 medical malpractice insurance is a party to the merger, the
14 agreement of merger or certificate of merger shall not be filed
15 until there has been filed the certificate issued by the Insurance
16 Commissioner approving the merger pursuant to Section 1555 of
17 the Insurance Code.

18 In lieu of an officers' certificate, a certificate of merger, on a
19 form prescribed by the Secretary of State, shall be filed for each
20 constituent other business entity. The certificate of merger shall
21 be executed and acknowledged by each domestic constituent
22 limited liability company by all of the managers of the limited
23 liability company (unless a lesser number is specified in its
24 articles of organization or operating agreement) and by each
25 domestic constituent limited partnership by all general partners
26 (unless a lesser number is provided in its certificate of limited
27 partnership or partnership agreement) and by each domestic
28 constituent general partnership by two partners (unless a lesser
29 number is provided in its partnership agreement) and by each
30 foreign constituent limited liability company by one or more
31 managers and by each foreign constituent general partnership or
32 foreign constituent limited partnership by one or more general
33 partners, and by each constituent reciprocal insurer by the
34 chairperson of the board, president, or vice president, and also by
35 the secretary or assistant secretary, or, if a constituent reciprocal
36 insurer has not appointed such officers, by the chairperson of the
37 board, president, or vice president, and also by the secretary or
38 assistant secretary of the constituent reciprocal insurer's
39 attorney-in-fact, and by each other party to the merger by those
40 persons required or authorized to execute the certificate of

1 merger by the laws under which that party is organized,
2 specifying for such party the provision of law or other basis for
3 the authority of the signing persons.

4 The certificate of merger shall set forth, if a vote of the
5 shareholders, members, partners, or other holders of interests of a
6 constituent other business entity was required, a statement setting
7 forth the total number of outstanding interests of each class
8 entitled to vote on the merger and that the agreement of merger
9 or its principal terms, as required, were approved by a vote of the
10 number of interests of each class which equaled or exceeded the
11 vote required, specifying each class entitled to vote and the
12 percentage vote required of each class, and any other information
13 required to be set forth under the laws under which the
14 constituent other business entity is organized, including, if a
15 domestic limited partnership is a party to the merger, subdivision
16 (a) of Section 15678.4, if a domestic general partnership is a
17 party to the merger, subdivision (b) of Section 16915, and, if a
18 domestic limited liability company is a party to the merger,
19 subdivision (a) of Section 17552. The certificate of merger for
20 each constituent foreign other business entity, if any, shall also
21 set forth the statutory or other basis under which that foreign
22 other business entity is authorized by the laws under which it is
23 organized to effect the merger.

24 The Secretary of State may certify a copy of the agreement of
25 merger separate from the officers' certificates and certificates of
26 merger attached thereto.

27 (g) A copy of an agreement of merger certified on or after the
28 effective date by an official having custody thereof has the same
29 force in evidence as the original and, except as against the state,
30 is conclusive evidence of the performance of all conditions
31 precedent to the merger, the existence on the effective date of the
32 surviving party to the merger, the performance of the conditions
33 necessary to the adoption of any amendment to the articles, if
34 applicable, contained in the agreement of merger, and the merger
35 of the constituent corporations, either by themselves or together
36 with other constituent parties, into the surviving party to the
37 merger.

38 (h) (1) The merger of domestic corporations with foreign
39 corporations or foreign other business entities in a merger in

1 which one or more other business entities is a party shall comply
2 with subdivisions (a) and (f) and this subdivision.

3 (2) Subject to subdivision (c) of Section 5008 and paragraph
4 (3), the merger shall be effective as to each domestic constituent
5 corporation and domestic constituent other business entity upon
6 filing of the agreement of merger with attachments as provided in
7 subdivision (f).

8 (3) If the surviving party is a foreign corporation or foreign
9 other business entity, except as provided in paragraph (4), the
10 merger shall be effective as to any domestic disappearing
11 corporation as of the time of effectiveness in the foreign
12 jurisdiction upon the filing in this state of a copy of the
13 agreement of merger with an officers' certificate of the surviving
14 foreign corporation and of each constituent foreign and domestic
15 corporation and a certificate of merger of each constituent other
16 business entity attached, which officers' certificates and
17 certificates of merger shall conform to the requirements of
18 subdivision (f).

19 If one or more domestic other business entities is a
20 disappearing party in a merger pursuant to this subdivision in
21 which a foreign other business entity is the surviving entity, a
22 certificate of merger required by the laws under which each
23 domestic other business entity is organized, including
24 subdivision (a) of Section 15678.4, subdivision (b) of Section
25 16915, or subdivision (a) of Section 17552, if applicable, shall
26 also be filed at the same time as the filing of the agreement of
27 merger.

28 (4) If the date of the filing in this state pursuant to this
29 subdivision is more than six months after the time of the
30 effectiveness in the foreign jurisdiction, or if the powers of a
31 domestic disappearing corporation are suspended at the time of
32 effectiveness in the foreign jurisdiction, the merger shall be
33 effective as to the domestic disappearing corporation as of the
34 date of filing in this state.

35 (5) Each foreign disappearing corporation that is qualified for
36 the transaction of intrastate business shall automatically by the
37 filing pursuant to subdivision (f) surrender its right to transact
38 intrastate business as of the date of filing in this state or, if later,
39 the effective date of the merger. With respect to each foreign
40 disappearing other business entity previously registered for the

1 transaction of intrastate business in this state, the filing of the
2 agreement of merger pursuant to subdivision (f) automatically
3 has the effect of a cancellation of registration for that foreign
4 other business entity as of the date of filing in this state or, if
5 later, the effective date of the merger, without the necessity of the
6 filing of a certificate of cancellation.

7 *SEC. 17.5. Section 6019.1 of the Corporations Code is*
8 *amended to read:*

9 6019.1. (a) Subject to the provisions of Sections 6010 and
10 9640, any one or more corporations may merge with one or more
11 other business entities (Section 5063.5). One or more other
12 domestic corporations and foreign corporations (Section 5053)
13 may be parties to the merger. Notwithstanding the provisions of
14 this section, such a merger may be effected only if:

15 (1) In a merger in which a domestic corporation or domestic
16 other business entity is a party, it is authorized by the laws under
17 which it is organized to effect the merger.

18 (2) In a merger in which a foreign corporation is a party, it is
19 authorized by the laws under which it is organized to effect the
20 merger.

21 (3) In a merger in which a foreign other business entity is a
22 party, it is authorized by the laws under which it is organized to
23 effect the merger.

24 (b) Each corporation and each other party which desires to
25 merge shall approve an agreement of merger. The board and the
26 members (Section 5034) of each corporation which desires to
27 merge, and each other person or persons, if any, whose approval
28 of an amendment of the articles of that corporation is required by
29 the articles or bylaws shall approve the agreement of merger. The
30 agreement of merger shall be approved on behalf of each other
31 party by those persons authorized or required to approve the
32 merger by the laws under which it is organized. The parties
33 desiring to merge shall be parties to the agreement of merger and
34 other persons, including a parent party (Section 5064.5), may be
35 parties to the agreement of merger. The agreement of merger
36 shall state all of the following:

37 (1) The terms and conditions of the merger.

38 (2) The name and place of incorporation or organization of
39 each party and the identity of the surviving party.

1 (3) The amendments, if any, subject to Sections 5810 and
2 5816, to the articles of the surviving corporation, if applicable, to
3 be effected by the merger. The name of the surviving corporation
4 may be, subject to subdivision (b) of Section 5122 and
5 subdivision (b) of Section 9122, the same as, or similar to, the
6 name of a disappearing party to the merger.

7 (4) The manner, if any, of converting the memberships of each
8 of the constituent corporations into shares, memberships,
9 interests, or other securities of the surviving party; and, if any
10 memberships of any of the constituent corporations are not to be
11 converted solely into shares, memberships, interests, or other
12 securities of the surviving party, the cash, rights, securities, or
13 other property which the holders of those memberships are to
14 receive in exchange for the memberships, which cash, rights,
15 securities, or other property may be in addition to, or in lieu of,
16 shares, memberships, interests, or other securities of the
17 surviving corporation or surviving other business entity.

18 (5) Any other details or provisions required by the laws under
19 which any party to the merger is organized, including, if a
20 domestic limited partnership is a party to the merger, subdivision
21 (a) of Section 15678.2; or, if a domestic general partnership is a
22 party to the merger, subdivision (a) of Section 16911, or, if a
23 domestic limited liability company is a party to the merger,
24 subdivision (a) of Section 17551.

25 (6) Any other details or provisions as are desired.

26 (c) Notwithstanding its prior approval, an agreement of merger
27 may be amended prior to the filing of the agreement of merger if
28 the amendment is approved by each constituent corporation in
29 the same manner as the original agreement of merger. If the
30 agreement of merger as so amended and approved is also
31 approved by each of the other parties to the agreement of merger,
32 as so amended it shall then constitute the agreement of merger.

33 (d) The board of a constituent corporation may, in its
34 discretion, abandon a merger, subject to the contractual rights, if
35 any, of third parties, including other parties to the agreement of
36 merger, without further approval by the members (Section 5034)
37 or other persons, at any time before the merger is effective.

38 (e) Each constituent corporation shall sign the agreement of
39 merger by its chairperson of the board, president or a vice

1 president, and also by its secretary or an assistant secretary acting
2 on behalf of their respective corporations.

3 (f) After required approvals of the merger by each constituent
4 corporation and each other party to the merger, the surviving
5 party shall file a copy of the agreement of merger with an
6 officers' certificate of each constituent domestic and foreign
7 corporation attached stating the total number of outstanding
8 shares or membership interests of each class, if any, entitled to
9 vote on the merger (and identifying any other person or persons
10 whose approval is required), that the agreement of merger in the
11 form attached or its principal terms, as required, were approved
12 by that corporation by a vote of a number of shares or
13 membership interests of each class entitled to vote, if any, which
14 equaled or exceeded the vote required, specifying each class
15 entitled to vote and the percentage vote required of each class,
16 and, if applicable, by that other person or persons whose
17 approval is required.

18 If equity securities of a parent party (Section 5064.5) are to be
19 issued in the merger, the officers' certificate or certificate of
20 merger of the controlled party shall state either that no vote of the
21 shareholders of the parent party was required or that the required
22 vote was obtained. The merger and any amendment of the
23 articles of the surviving corporation, if applicable, contained in
24 the agreement of merger shall be effective upon the filing of the
25 agreement of merger, subject to the provisions of subdivision (h).
26 ~~The agreement of merger shall not be filed, however, until there~~
27 ~~has been filed by or on behalf of each party to the merger taxed~~
28 ~~under the Bank and Corporation Tax Law, the existence of which~~
29 ~~is terminated by the merger, the certificate of satisfaction of the~~
30 ~~Franchise Tax Board that all taxes imposed by that law have been~~
31 ~~paid or secured.~~ If a domestic reciprocal insurer organized after
32 1974 to provide medical malpractice insurance is a party to the
33 merger, the agreement of merger or certificate of merger shall not
34 be filed until there has been filed the certificate issued by the
35 Insurance Commissioner approving the merger pursuant to
36 Section 1555 of the Insurance Code.

37 In lieu of an officers' certificate, a certificate of merger, on a
38 form prescribed by the Secretary of State, shall be filed for each
39 constituent other business entity. The certificate of merger shall
40 be executed and acknowledged by each domestic constituent

1 limited liability company by all of the managers of the limited
2 liability company (unless a lesser number is specified in its
3 articles of organization or operating agreement) and by each
4 domestic constituent limited partnership by all general partners
5 (unless a lesser number is provided in its certificate of limited
6 partnership or partnership agreement) and by each domestic
7 constituent general partnership by two partners (unless a lesser
8 number is provided in its partnership agreement) and by each
9 foreign constituent limited liability company by one or more
10 managers and by each foreign constituent general partnership or
11 foreign constituent limited partnership by one or more general
12 partners, and by each constituent reciprocal insurer by the
13 chairperson of the board, president, or vice president, and also by
14 the secretary or assistant secretary, or, if a constituent reciprocal
15 insurer has not appointed such officers, by the chairperson of the
16 board, president, or vice president, and also by the secretary or
17 assistant secretary of the constituent reciprocal insurer's
18 attorney-in-fact, and by each other party to the merger by those
19 persons required or authorized to execute the certificate of
20 merger by the laws under which that party is organized,
21 specifying for such party the provision of law or other basis for
22 the authority of the signing persons.

23 The certificate of merger shall set forth, if a vote of the
24 shareholders, members, partners, or other holders of interests of a
25 constituent other business entity was required, a statement setting
26 forth the total number of outstanding interests of each class
27 entitled to vote on the merger and that the agreement of merger
28 or its principal terms, as required, were approved by a vote of the
29 number of interests of each class which equaled or exceeded the
30 vote required, specifying each class entitled to vote and the
31 percentage vote required of each class, and any other information
32 required to be set forth under the laws under which the
33 constituent other business entity is organized, including, if a
34 domestic limited partnership is a party to the merger, subdivision
35 (a) of Section 15678.4, if a domestic general partnership is a
36 party to the merger, subdivision (b) of Section 16915, and, if a
37 domestic limited liability company is a party to the merger,
38 subdivision (a) of Section 17552. The certificate of merger for
39 each constituent foreign other business entity, if any, shall also
40 set forth the statutory or other basis under which that foreign

1 other business entity is authorized by the laws under which it is
2 organized to effect the merger.

3 The Secretary of State may certify a copy of the agreement of
4 merger separate from the officers' certificates and certificates of
5 merger attached thereto.

6 (g) A copy of an agreement of merger certified on or after the
7 effective date by an official having custody thereof has the same
8 force in evidence as the original and, except as against the state,
9 is conclusive evidence of the performance of all conditions
10 precedent to the merger, the existence on the effective date of the
11 surviving party to the merger, the performance of the conditions
12 necessary to the adoption of any amendment to the articles, if
13 applicable, contained in the agreement of merger, and the merger
14 of the constituent corporations, either by themselves or together
15 with other constituent parties, into the surviving party to the
16 merger.

17 (h) (1) The merger of domestic corporations with foreign
18 corporations or foreign other business entities in a merger in
19 which one or more other business entities is a party shall comply
20 with subdivisions (a) and (f) and this subdivision.

21 (2) Subject to subdivision (c) of Section 5008 and paragraph
22 (3), the merger shall be effective as to each domestic constituent
23 corporation and domestic constituent other business entity upon
24 filing of the agreement of merger with attachments as provided in
25 subdivision (f).

26 (3) If the surviving party is a foreign corporation or foreign
27 other business entity, except as provided in paragraph (4), the
28 merger shall be effective as to any domestic disappearing
29 corporation as of the time of effectiveness in the foreign
30 jurisdiction upon the filing in this state of a copy of the
31 agreement of merger with an officers' certificate of the surviving
32 foreign corporation and of each constituent foreign and domestic
33 corporation and a certificate of merger of each constituent other
34 business entity attached, which officers' certificates and
35 certificates of merger shall conform to the requirements of
36 subdivision (f).

37 If one or more domestic other business entities is a
38 disappearing party in a merger pursuant to this subdivision in
39 which a foreign other business entity is the surviving entity, a
40 certificate of merger required by the laws under which each

1 domestic other business entity is organized, including
2 subdivision (a) of Section 15678.4, subdivision (b) of Section
3 16915, or subdivision (a) of Section 17552, if applicable, shall
4 also be filed at the same time as the filing of the agreement of
5 merger.

6 (4) If the date of the filing in this state pursuant to this
7 subdivision is more than six months after the time of the
8 effectiveness in the foreign jurisdiction, or if the powers of a
9 domestic disappearing corporation are suspended at the time of
10 effectiveness in the foreign jurisdiction, the merger shall be
11 effective as to the domestic disappearing corporation as of the
12 date of filing in this state.

13 (5) Each foreign disappearing corporation that is qualified for
14 the transaction of intrastate business shall automatically by the
15 filing pursuant to subdivision (f) surrender its right to transact
16 intrastate business as of the date of filing in this state or, if later,
17 the effective date of the merger. With respect to each foreign
18 disappearing other business entity previously registered for the
19 transaction of intrastate business in this state, the filing of the
20 agreement of merger pursuant to subdivision (f) automatically
21 has the effect of a cancellation of registration for that foreign
22 other business entity as of the date of filing in this state or, if
23 later, the effective date of the merger, without the necessity of the
24 filing of a certificate of cancellation.

25 SEC. 18. Section 6020.5 of the Corporations Code is
26 amended to read:

27 6020.5. (a) Upon merger pursuant to this chapter, a surviving
28 domestic or foreign corporation or other business entity shall be
29 deemed to have assumed the liability of each disappearing
30 domestic or foreign corporation or other business entity that is
31 taxed under Part 10 (commencing with Section 17001) of, or
32 under Part 11 (commencing with Section 23001) of, Division 2
33 of the Revenue and Taxation Code for the following:

34 (1) To prepare and file, or to cause to be prepared and filed,
35 tax and information returns otherwise required of that
36 disappearing entity as specified in Chapter 2 (commencing with
37 Section 18501) of Part 10.2 of Division 2 of the Revenue and
38 Taxation Code.

39 (2) To pay any tax liability determined to be due.

(b) If the surviving entity is a domestic limited liability company, domestic corporation, or registered limited liability partnership or a foreign limited liability company, foreign limited liability partnership, or foreign corporation that is registered or qualified to do business in California, the Secretary of State shall notify the Franchise Tax Board of the merger.

SEC. 19. Section 6518 of the Corporations Code is amended to read:

6518. (a) Upon the final settlement of the accounts of the directors or other persons appointed pursuant to Section 6515 and the determination that the corporation's affairs are in condition for it to be dissolved, the court may make an order declaring the corporation duly wound up and dissolved. The order shall declare:

(1) That the corporation has been duly wound up, that a final franchise tax return, as described by Section 23332 of the Revenue and Taxation Code, has been filed with the Franchise Tax Board, as required under Part 10.2 (commencing with Section 18401) of Division 2 of the Revenue and Taxation Code and that its known debts and liabilities have been paid or adequately provided for, or that those debts and liabilities have been paid as far as its assets permitted, as the case may be. If there are known debts or liabilities for payment of which adequate provision has been made, the order shall state what provision has been made, setting forth the name and address of the corporation, person or governmental agency that has assumed or guaranteed the payment, or the name and address of the depository with which deposit has been made or such other information as may be necessary to enable the creditor or other person to whom payment is to be made to appear and claim payment of the debt or liability.

(2) That its known assets have been distributed to the persons entitled thereto or that it acquired no known assets, as the case may be.

(3) That the accounts of directors or such other persons have been settled and that they are discharged from their duties and liabilities to creditors and members.

(4) That the corporation is dissolved.

(b) The court may make such additional orders and grant such further relief as it deems proper upon the evidence submitted.

1 (c) Upon the making of the order declaring the corporation
2 dissolved, corporate existence shall cease except for the purposes
3 of further winding up if needed; and the directors or such other
4 persons shall be discharged from their duties and liabilities,
5 except in respect to completion of the winding up.

6 SEC. 20. Section 6519 of the Corporations Code is amended
7 to read:

8 6519. Whenever a corporation is dissolved or its existence
9 forfeited by order, decree or judgment of a court, a copy of the
10 order, decree or judgment, certified by the clerk of court, shall
11 forthwith be filed. The Secretary of State shall notify the
12 Franchise Tax Board of the dissolution.

13 SEC. 21. Section 6615 of the Corporations Code is amended
14 to read:

15 6615. (a) When a corporation has been completely wound up
16 without court proceedings, a majority of the directors then in
17 office shall sign and verify a certificate of dissolution stating:

18 (1) That the corporation has been completely wound up.

19 (2) That its known debts and liabilities have been actually
20 paid, or adequately provided for, or paid or adequately provided
21 for as far as its assets permitted, or that it has incurred no known
22 debts or liabilities, as the case may be. If there are known debts
23 or liabilities for payment of which adequate provision has been
24 made, the certificate shall state what provision has been made,
25 setting forth the name and address of the corporation, person or
26 governmental agency that has assumed or guaranteed the
27 payment, or the name and address of the depositary with which
28 deposit has been made or other information as may be necessary
29 to enable the creditor or other person to whom payment is to be
30 made to appear and claim payment of the debt or liability.

31 (3) That the corporation is dissolved.

32 (4) That a final franchise tax return, as described by Section
33 23332 of the Revenue and Taxation Code, has been or will be
34 filed with the Franchise Tax Board, as required under Part 10.2
35 (commencing with Section 18401) of Division 2 of the Revenue
36 and Taxation Code.

37 (b) One of the following documents issued by the Attorney
38 General shall be attached to the certificate of dissolution:

39 (1) A written waiver of objections to the distribution of the
40 corporation's assets pursuant to subdivision (c) of Section 6716.

1 (2) A written confirmation that the corporation has no assets.

2 (c) The certificate of dissolution and attachment described in
3 subdivision (b) shall be filed with the Secretary of State who
4 shall not accept a certificate of dissolution for filing without this
5 attachment. The corporate existence shall cease upon the
6 acceptance of the filing of the certificate of dissolution and
7 attachment by the Secretary of State, except for the purpose of
8 further winding up if needed. The Secretary of State shall notify
9 the Franchise Tax Board of the dissolution.

10 SEC. 22. Section 8014 of the Corporations Code is amended
11 to read:

12 8014. After approval of a merger by the board and any
13 approval by the members (Section 5034) required by Section
14 8012, the surviving corporation shall file a copy of the agreement
15 of merger with an officers' certificate of each constituent
16 corporation attached stating the total number of memberships of
17 each class entitled to vote on the merger, identifying any other
18 person or persons whose approval is required, and that the
19 principal terms of the agreement in the form attached were duly
20 approved by the required vote of the members and, if applicable,
21 any other person or persons. The merger and any amendment of
22 the articles of the surviving corporation contained in the merger
23 agreement shall thereupon be effective (subject to subdivision (c)
24 of Section 5008 and subject to the provisions of Section 8018)
25 and the several parties thereto shall be one corporation. The
26 Secretary of State may certify a copy of the merger agreement
27 separate from the officers' certificates attached thereto.

28 SEC. 23. Section 8018 of the Corporations Code is amended
29 to read:

30 8018. (a) Subject to the provisions of Section 8010, the
31 merger of any number of corporations with any number of
32 foreign corporations, foreign business corporations or domestic
33 corporations may be effected if the foreign corporations are
34 authorized by the laws under which they are formed to effect the
35 merger. The surviving corporation may be any one of the
36 constituent corporations and shall continue to exist under the
37 laws of the state or place of its incorporation.

38 (b) If the surviving corporation is a mutual benefit corporation,
39 the merger proceedings with respect to that corporation and any
40 domestic disappearing corporation shall conform to the

1 provisions of this chapter and other applicable laws of this state,
2 but if the surviving corporation is a foreign corporation, then,
3 subject to the requirements of subdivision (d) and Section 8012
4 the merger proceedings may be in accordance with the laws of
5 the state or place of incorporation of the surviving corporation.

6 (c) If the surviving corporation is a mutual benefit corporation,
7 the agreement and the officers' certificate of each constituent
8 corporation shall be filed as provided in Section 8014 and
9 thereupon, subject to subdivision (c) of Section 5008, the merger
10 shall be effective as to each corporation; and each foreign
11 disappearing corporation that is qualified for the transaction of
12 intrastate business shall, by virtue of the filing, automatically
13 surrender its right to transact intrastate business.

14 (d) If the surviving corporation is a foreign corporation, or
15 foreign business corporation, the merger shall become effective
16 in accordance with the law of the jurisdiction in which it is
17 organized, but shall be effective as to any disappearing
18 corporation as of the time of effectiveness in the foreign
19 jurisdiction upon the filing in this state as required by this
20 subdivision. There shall be filed as to the domestic disappearing
21 corporation or corporations the documents described in any one
22 of the following paragraphs:

23 (1) A copy of the agreement, certificate, or other document
24 filed by the surviving foreign corporation in the state or place of
25 its incorporation for the purpose of effecting the merger, which
26 copy shall be certified by the public officer having official
27 custody of the original.

28 (2) An executed counterpart of the agreement, certificate, or
29 other document filed by the surviving corporation in the state or
30 place of its incorporation for the purpose of effecting the merger.

31 (3) A copy of the agreement of merger with an officers'
32 certificate of the surviving foreign corporation and of each
33 constituent domestic corporation attached, which officers'
34 certificates shall conform to the requirements of Section 8014.

35 (e) If the date of the filing in this state pursuant to subdivision
36 (d) is more than six months after the time of the effectiveness in
37 the foreign jurisdiction, or if the powers of the domestic
38 corporation are suspended at the time of effectiveness in the
39 foreign jurisdiction, the merger shall be effective as to the
40 domestic disappearing corporation or corporations as of the date

1 of filing in this state. Each foreign disappearing corporation that
2 is qualified for the transaction of intrastate business shall
3 automatically by the filing pursuant to subdivision (d) surrender
4 its right to transact intrastate business as of the date of filing in
5 this state regardless of the time of effectiveness as to a domestic
6 disappearing corporation.

7 SEC. 24. Section 8019.1 of the Corporations Code is
8 amended to read:

9 8019.1. (a) Subject to the provisions of Section 8010, any
10 one or more corporations may merge with one or more other
11 business entities (Section 5063.5). One or more other domestic
12 corporations, foreign corporations (Sections 5053), and foreign
13 business corporations (Section 5052) may be parties to the
14 merger. Notwithstanding the provisions of this section, such a
15 merger may be effected only if:

16 (1) In a merger in which a domestic corporation or domestic
17 other business entity is a party, it is authorized by the laws under
18 which it is organized to effect the merger.

19 (2) In a merger in which a foreign corporation or foreign
20 business corporation is a party, it is authorized by the laws under
21 which it is organized to effect the merger.

22 (3) In a merger in which a foreign other business entity is a
23 party, it is authorized by the laws under which it is organized to
24 effect the merger.

25 (b) Each corporation and each other party which desires to
26 merge shall approve an agreement of merger. The board and the
27 members (Section 5034) of each corporation which desires to
28 merge, and each other person or persons, if any, whose approval
29 of an amendment of the articles of that corporation is required by
30 the articles or bylaws shall approve the agreement of merger. The
31 agreement of merger shall be approved on behalf of each other
32 constituent party by those persons authorized or required to
33 approve the merger by the laws under which it is organized. The
34 parties desiring to merge shall be parties to the agreement of
35 merger and other persons, including a parent party (Section
36 5064.5), may be parties to the agreement of merger. The
37 agreement of merger shall state all of the following:

38 (1) The terms and conditions of the merger.

39 (2) The name and place of incorporation or organization of
40 each party and the identity of the surviving party.

1 (3) The amendments, if any, subject to Sections 7810 and
2 7816, to the articles of the surviving corporation, if applicable, to
3 be effected by the merger. The name of the surviving corporation
4 may be, subject to subdivisions (b) and (c) of Section 7122, the
5 same as or similar to the name of a disappearing party to the
6 merger.

7 (4) The manner, if any, of converting the memberships or
8 securities of each of the constituent corporations into shares,
9 memberships, interests, or other securities of the surviving party;
10 and, if any memberships or securities of any of the constituent
11 corporations are not to be converted solely into shares,
12 memberships, interests, or other securities of the surviving party,
13 cash, rights, securities, or other property which the holders of
14 those memberships or securities are to receive in exchange for
15 the memberships or securities, which cash, rights, securities, or
16 other property may be in addition to or in lieu of shares,
17 memberships, interests, or other securities of the surviving party.

18 (5) Any other details or provisions required by the laws under
19 which any party to the merger is organized, including, if a
20 domestic limited partnership is a party to the merger, subdivision
21 (a) of Section 15678.2, or, if a domestic general partnership is a
22 party to the merger, subdivision (a) of Section 16911, or, if a
23 domestic limited liability company is a party to the merger,
24 subdivision (a) of Section 17551.

25 (6) Any other details or provisions as are desired.

26 (c) Each membership of the same class of any constituent
27 corporation (other than the cancellation of memberships held by
28 a party to the merger or its parent or a wholly owned subsidiary
29 of either in another constituent corporation) shall be treated
30 equally with respect to any distribution of cash, property, rights,
31 or securities unless (i) all members of the class consent or (ii) the
32 commissioner has approved the terms and conditions of the
33 transaction and the fairness of those terms pursuant to Section
34 25142.

35 (d) Notwithstanding its prior approval, an agreement of
36 merger may be amended prior to the filing of the agreement of
37 merger if the amendment is approved by each constituent
38 corporation in the same manner as the original agreement of
39 merger. If the agreement of merger as so amended and approved
40 is also approved by each of the other parties to the agreement of

1 merger, as so amended it shall then constitute the agreement of
2 merger.

3 (e) The board of a constituent corporation may, in its
4 discretion, abandon a merger, subject to the contractual rights, if
5 any, of third parties, including other parties to the agreement of
6 merger, without further approval by the members (Section 5034)
7 or other persons, at any time before the merger is effective.

8 (f) Each constituent corporation shall sign the agreement of
9 merger by its chairperson of the board, president, or a vice
10 president and also by its secretary or an assistant secretary acting
11 on behalf of their respective corporations.

12 (g) After required approvals of the merger by each constituent
13 corporation and each other party to the merger, the surviving
14 party shall file a copy of the agreement of merger with an
15 officers' certificate of each constituent domestic corporation,
16 foreign corporation, and foreign business corporation attached
17 stating the total number of outstanding shares or membership
18 interests of each class entitled to vote on the merger (and
19 identifying any other person or persons whose approval is
20 required), that the agreement of merger in the form attached or its
21 principal terms, as required, were approved by that corporation
22 by a vote of a number of shares or membership interests of each
23 class which equaled or exceeded the vote required, specifying
24 each class entitled to vote required of each class, and, if
25 applicable, by such other person or persons whose approval is
26 required.

27 If equity securities of a parent party (Section 5064.5) are to be
28 issued in the merger, the officers' certificate or certificate of
29 merger of the controlled party shall state either that no vote of the
30 shareholders of the parent party was required or that the required
31 vote was obtained. The merger and any amendment of the
32 articles of the surviving corporation, if applicable, contained in
33 the agreement of merger shall be effective upon the filing of the
34 agreement of merger, subject to the provisions of subdivision (i).
35 If a domestic reciprocal insurer organized after 1974 to provide
36 medical malpractice insurance is a party to the merger, the
37 agreement of merger or certificate of merger shall not be filed
38 until there has been filed the certificate issued by the Insurance
39 Commissioner approving the merger pursuant to Section 1555 of
40 the Insurance Code.

1 In lieu of an officers' certificate, a certificate of merger, on a
2 form prescribed by the Secretary of State, shall be filed for each
3 constituent other business entity. The certificate of merger shall
4 be executed and acknowledged by each domestic constituent
5 limited liability company by all of the managers of the limited
6 liability company (unless a lesser number is specified in its
7 articles of organization or operating agreement) and by each
8 domestic constituent limited partnership by all general partners
9 (unless a lesser number is provided in its certificate of limited
10 partnership or partnership agreement) and by each domestic
11 constituent general partnership by two partners (unless a lesser
12 number is provided in its partnership agreement) and by each
13 foreign constituent limited liability company by one or more
14 managers and by each foreign constituent general partnership or
15 foreign constituent limited partnership by one or more general
16 partners, and by each constituent reciprocal insurer by the
17 chairperson of the board, president, or vice president, and by the
18 secretary or assistant secretary, or, if a constituent reciprocal
19 insurer has not appointed such officers, by the chairperson of the
20 board, president, or vice president, and by the secretary or
21 assistant secretary of the constituent reciprocal insurer's
22 attorney-in-fact, and by each other party to the merger by those
23 persons required or authorized to execute the certificate of
24 merger by the laws under which that party is organized,
25 specifying for such party the provision of law or other basis for
26 the authority of the signing persons.

27 The certificate of merger shall set forth, if a vote of the
28 shareholders, members, partners, or other holders of interests of a
29 constituent other business entity was required, a statement setting
30 forth the total number of outstanding interests of each class
31 entitled to vote on the merger and that the principal terms of the
32 agreement of merger were approved by a vote of the number of
33 interests of each class which equaled or exceeded the vote
34 required, specifying each class entitled to vote and the percentage
35 vote required of each class, and any other information required to
36 be set forth under the laws under which the constituent other
37 business entity is organized, including, if a domestic limited
38 partnership is a party to the merger, subdivision (a) of Section
39 15678.4, if a domestic general partnership is a party to the
40 merger, subdivision (b) of Section 16915 and, if a domestic

1 limited liability company is a party to the merger, subdivision (a)
2 of Section 17552. The certificate of merger for each constituent
3 foreign other business entity, if any, shall also set forth the
4 statutory or other basis under which that foreign other business
5 entity is authorized by the laws under which it is organized to
6 effect the merger.

7 The Secretary of State may certify a copy of the agreement of
8 merger separate from the officers' certificates and certificates of
9 merger attached thereto.

10 (h) A copy of an agreement of merger certified on or after the
11 effective date by an official having custody thereof has the same
12 force in evidence as the original and, except as against the state,
13 is conclusive evidence of the performance of all conditions
14 precedent to the merger, the existence on the effective date of the
15 surviving party to the merger, the performance of the conditions
16 necessary to the adoption of any amendment to the articles, if
17 applicable, contained in the agreement of merger, and of the
18 merger of the constituent corporations, either by themselves or
19 together with other constituent parties, into the surviving party to
20 the merger.

21 (i) (1) The merger of domestic corporations with foreign
22 corporations or foreign other business entities in a merger in
23 which one or more other business entities is a party shall comply
24 with subdivisions (a) and (g) and this subdivision.

25 (2) Subject to subdivision (c) of Section 5008 and paragraph
26 (3), the merger shall be effective as to each domestic constituent
27 corporation and domestic constituent other business entity upon
28 filing of the agreement of merger with attachments as provided in
29 subdivision (g).

30 (3) If the surviving party is a foreign corporation or foreign
31 business corporation or foreign other business entity, except as
32 provided in paragraph (4), the merger shall be effective as to any
33 domestic disappearing corporation as of the time of effectiveness
34 in the foreign jurisdiction upon the filing in this state of a copy of
35 the agreement of merger with an officers' certificate of the
36 surviving foreign corporation or foreign business corporation and
37 of each constituent foreign and domestic corporation and a
38 certificate of merger of each constituent other business entity
39 attached, which officers' certificates and certificates of merger
40 shall conform to the requirements of subdivision (g).

1 If one or more domestic other business entities is a
2 disappearing party in a merger pursuant to this subdivision in
3 which a foreign other business entity is the surviving entity, a
4 certificate of merger required by the laws under which each
5 domestic other business entity is organized, including
6 subdivision (a) of Section 15678.4, subdivision (b) of Section
7 16915, or subdivision (a) of Section 17522, if applicable, shall
8 also be filed at the same time as the filing of the agreement of
9 merger.

10 (4) If the date of the filing in this state pursuant to this
11 subdivision is more than six months after the time of the
12 effectiveness in the foreign jurisdiction, or if the powers of a
13 domestic disappearing corporation are suspended at the time of
14 effectiveness in the foreign jurisdiction, the merger shall be
15 effective as to the domestic disappearing corporation as of the
16 date of filing in this state.

17 (5) Each foreign disappearing corporation that is qualified for
18 the transaction of intrastate business shall automatically by the
19 filing pursuant to subdivision (g) surrender its right to transact
20 intrastate business as of the date of filing in this state or, if later,
21 the effective date of the merger. With respect to each foreign
22 disappearing other business entity previously registered for the
23 transaction of intrastate business in this state, the filing of the
24 agreement of merger pursuant to subdivision (g) automatically
25 has the effect of a cancellation of registration for that foreign
26 other business entity as of the date of filing in this state or, if
27 later, the effective date of the merger, without the necessity of the
28 filing of a certificate of cancellation.

29 SEC. 25. Section 8020.5 of the Corporations Code is
30 amended to read:

31 8020.5. (a) Upon merger pursuant to this chapter, a surviving
32 domestic or foreign corporation or other business entity shall be
33 deemed to have assumed the liability of each disappearing
34 domestic or foreign corporation or other business entity that is
35 taxed under Part 10 (commencing with Section 17001) of, or
36 under Part 11 (commencing with Section 23001) of, Division 2
37 of the Revenue and Taxation Code for the following:

38 (1) To prepare and file, or to cause to be prepared and filed,
39 tax and information returns otherwise required of that
40 disappearing entity as specified in Chapter 2 (commencing with

1 Section 18501) of Part 10.2 of Division 2 of the Revenue and
2 Taxation Code.

3 (2) To pay any tax liability determined to be due.

4 (b) If the surviving entity is a domestic limited liability
5 company, domestic corporation, or registered limited liability
6 partnership or a foreign limited liability company, foreign limited
7 liability partnership, or foreign corporation that is registered or
8 qualified to do business in California, the Secretary of State shall
9 notify the Franchise Tax Board of the merger.

10 SEC. 26. Section 8518 of the Corporations Code is amended
11 to read:

12 8518. (a) Upon the final settlement of the accounts of the
13 directors or other persons appointed pursuant to Section 8515 and
14 the determination that the corporation's affairs are in condition
15 for it to be dissolved, the court may make an order declaring the
16 corporation duly wound up and dissolved. The order shall
17 declare:

18 (1) That the corporation has been duly wound up, that a final
19 franchise tax return, as described by Section 23332 of the
20 Revenue and Taxation Code, has been filed with the Franchise
21 Tax Board, as required under Part 10.2 (commencing with
22 Section 18401) of Division 2 of the Revenue and Taxation Code
23 and that its known debts and liabilities have been paid or
24 adequately provided for, or that those debts and liabilities have
25 been paid as far as its assets permitted, as the case may be. If
26 there are known debts or liabilities for payment of which
27 adequate provision has been made, the order shall state what
28 provision has been made, setting forth the name and address of
29 the corporation, person or governmental agency that has assumed
30 or guaranteed the payment, or the name and address of the
31 depository with which deposit has been made or such other
32 information as may be necessary to enable the creditor or other
33 person to whom payment is to be made to appear and claim
34 payment of the debt or liability.

35 (2) That its known assets have been distributed to the persons
36 entitled thereto or that it acquired no known assets, as the case
37 may be.

38 (3) That the accounts of directors or such other persons have
39 been settled and that they are discharged from their duties and
40 liabilities to creditors and members.

1 (4) That the corporation is dissolved.

2 (b) The court may make such additional orders and grant such
3 further relief as it deems proper upon the evidence submitted.

4 (c) Upon the making of the order declaring the corporation
5 dissolved, corporate existence shall cease except for the purposes
6 of further winding up if needed; and the directors or such other
7 persons shall be discharged from their duties and liabilities,
8 except in respect to completion of the winding up.

9 SEC. 27. Section 8519 of the Corporations Code is amended
10 to read:

11 8519. Whenever a corporation is dissolved or its existence
12 forfeited by order, decree or judgment of a court, a copy of the
13 order, decree or judgment, certified by the clerk of court, shall
14 forthwith be filed. The Secretary of State shall notify the
15 Franchise Tax Board of the dissolution.

16 SEC. 28. Section 8615 of the Corporations Code is amended
17 to read:

18 8615. (a) When a corporation has been completely wound up
19 without court proceedings therefor, a majority of the directors
20 then in office shall sign and verify a certificate of dissolution
21 stating:

22 (1) That the corporation has been completely wound up.

23 (2) That its known debts and liabilities have been actually
24 paid, or adequately provided for, or paid or adequately provided
25 for as far as its assets permitted, or that it has incurred no known
26 debts or liabilities, as the case may be. If there are known debts
27 or liabilities for payment of which adequate provision has been
28 made, the certificate shall state what provision has been made,
29 setting forth the name and address of the corporation, person or
30 governmental agency that has assumed or guaranteed the
31 payment, or the name and address of the depository with which
32 deposit has been made or such other information as may be
33 necessary to enable the creditor or other person to whom
34 payment is to be made to appear and claim payment of the debt
35 or liability.

36 (3) That its known assets have been distributed to the persons
37 entitled thereto or that it acquired no known assets, as the case
38 may be.

39 (4) That the corporation is dissolved.

1 (5) That a final franchise tax return, as described by Section
2 23332 of the Revenue and Taxation Code, has been or will be
3 filed with the Franchise Tax Board, as required under Part 10.2
4 (commencing with Section 18401) of Division 2 of the Revenue
5 and Taxation Code.

6 (b) The certificate of dissolution shall be filed and thereupon
7 the corporate existence shall cease, except for the purpose of
8 further winding up if needed. The Secretary of State shall notify
9 the Franchise Tax Board of the dissolution.

10 SEC. 29. Section 12535 of the Corporations Code is amended
11 to read:

12 12535. After approval of a merger by the board and any
13 approval by the members under Section 12533, the surviving
14 corporation shall file a copy of the agreement of merger with an
15 officers' certificate of each constituent corporation attached
16 stating the total number of memberships of each class entitled to
17 vote on the merger, and that the principal terms of the agreement
18 in the form attached were duly approved by the required vote of
19 the members. The merger and any amendment of the articles of
20 the surviving corporation contained in the merger agreement
21 shall thereupon be effective (subject to subdivision (c) of Section
22 12214 and subject to the provisions of Section 12539) and the
23 several parties thereto shall be one corporation. The Secretary of
24 State may certify a copy of the merger agreement separate from
25 the officers' certificates attached thereto.

26 SEC. 30. Section 12539 of the Corporations Code is amended
27 to read:

28 12539. (a) Subject to the provisions of Section 12530, the
29 merger of any number of corporations with any number of
30 foreign corporations, foreign business corporations, or domestic
31 corporations may be effected if the foreign corporations are
32 authorized by the laws under which they are formed to effect the
33 merger. The surviving corporation may be any one of the
34 constituent corporations and shall continue to exist under the
35 laws of the state or place of its incorporation.

36 (b) If the surviving corporation is a cooperative corporation,
37 the merger proceedings with respect to that corporation and any
38 domestic disappearing corporation shall conform to the
39 provisions of this chapter and other applicable laws of this state,
40 but if the surviving corporation is a foreign corporation, then,

1 subject to the requirements of subdivision (d) and Section 12533,
2 the merger proceedings may be in accordance with the laws of
3 the state or place of incorporation of the surviving corporation.

4 (c) If the surviving corporation is a cooperative corporation,
5 the agreement and the officers' certificate of each constituent
6 corporation shall be filed as provided in Section 12535 and
7 thereupon, subject to subdivision (c) of Section 12214, the
8 merger shall be effective as to each corporation; and each foreign
9 disappearing corporation that is qualified for the transaction of
10 intrastate business shall, by virtue of the filing, automatically
11 surrender its right to transact intrastate business.

12 (d) If the surviving corporation is a foreign corporation, the
13 merger shall become effective in accordance with the law of the
14 jurisdiction in which it is organized, but shall be effective as to
15 any disappearing corporation as of the time of effectiveness in
16 the foreign jurisdiction upon the filing in this state as required by
17 this subdivision. There shall be filed as to the domestic
18 disappearing corporation or corporations the documents
19 described in any one of the following paragraphs:

20 (1) A copy of the agreement, certificate, or other document
21 filed by the surviving corporation in the state or place of its
22 incorporation for the purpose of effecting the merger, which copy
23 shall be certified by the public officer having official custody of
24 the original.

25 (2) An executed counterpart of the agreement, certificate, or
26 other document filed by the surviving corporation in the state or
27 place of its incorporation for the purpose of effecting the merger.

28 (3) A copy of the agreement of merger with an officers'
29 certificate of the surviving foreign corporation and of each
30 constituent domestic corporation attached.

31 (e) If the date of the filing in this state pursuant to subdivision
32 (d) is more than six months after the time of the effectiveness in
33 the foreign jurisdiction, or if the powers of the domestic
34 corporation are suspended at the time of effectiveness in the
35 foreign jurisdiction, the merger shall be effective as to the
36 domestic disappearing corporation or corporations as of the date
37 of filing in this state. Each foreign disappearing corporation that
38 is qualified for the transaction of intrastate business shall
39 automatically by the filing pursuant to subdivision (d) surrender
40 its right to transact intrastate business as of the date of the filing

1 in this state regardless of the time of effectiveness as to a
2 domestic disappearing corporation.

3 SEC. 31. Section 12540.1 of the Corporations Code is
4 amended to read:

5 12540.1. (a) Any one or more corporations may merge with
6 one or more other business entities (Section 12242.5). Subject to
7 the provisions of Section 12530, one or more other domestic
8 corporations or foreign corporations (Section 12237) may be
9 parties to the merger.

10 Notwithstanding the provisions of this section, such a merger
11 may be effected only if:

12 (1) In a merger in which a domestic corporation or domestic
13 other business entity is a party, it is authorized by the laws under
14 which it is organized to effect the merger.

15 (2) In a merger in which a foreign corporation is a party, it is
16 authorized by the laws under which it is organized to effect the
17 merger.

18 (3) In a merger in which a foreign other business entity is a
19 party, it is authorized by the laws under which it is organized to
20 effect the merger.

21 (b) Each corporation, other domestic corporation, foreign
22 corporation, and other business entity which desires to merge
23 shall approve an agreement of merger. The board and the
24 members of each corporation which desires to merge shall
25 approve (Sections 12222 and 12224) the agreement of merger.
26 The agreement of merger shall be approved on behalf of each
27 other constituent party by those persons authorized or required to
28 approve the merger by the laws under which it is organized.

29 The parties desiring to merge shall be parties to the agreement
30 of merger and other persons, including a parent party (Section
31 12242.6), may be parties to the agreement of merger. The
32 agreement of merger shall state all of the following:

33 (1) The terms and conditions of the merger.

34 (2) The name and place of incorporation or organization of
35 each party and the identity of the surviving party.

36 (3) The amendments, if any, subject to Sections 12500 and
37 12507, to the articles of the surviving corporation, if applicable,
38 to be effected by the merger. The name of the surviving
39 corporation may be, subject to subdivisions (b) and (c) of Section

1 12302, the same as, or similar to, the name of a disappearing
2 party to the merger.

3 (4) The manner, if any, of converting the memberships or
4 securities of each of the constituent corporations into shares,
5 memberships, interests, or other securities of the surviving party
6 and, if any memberships or securities of any of the constituent
7 corporations are not to be converted solely into shares,
8 memberships, interests, or other securities of the surviving party,
9 the cash, rights, securities, or other property which the holders of
10 those memberships or securities are to receive in exchange for
11 the memberships or securities, which cash, rights, securities, or
12 other property may be in addition to or in lieu of shares,
13 memberships, interests, or other securities of the surviving party.

14 (5) Any other details or provisions required by the laws under
15 which any party to the merger is organized, including, if a
16 domestic limited partnership is a party to the merger, subdivision
17 (a) of Section 15678.2, or, if a domestic general partnership is a
18 party to the merger, subdivision (a) of Section 16911, or, if a
19 domestic limited liability company is a party to the merger,
20 subdivision (a) of Section 17551.

21 (6) Any other details or provisions as are desired.

22 (c) Each membership of the same class of any constituent
23 corporation (other than the cancellation of memberships held by
24 a party to the merger or its parent or a wholly owned subsidiary
25 of either in another constituent corporation) shall be treated
26 equally with respect to any distribution of cash, property, rights,
27 or securities unless (i) all members of the class consent or (ii) the
28 commissioner has approved the terms and conditions of the
29 transaction and the fairness of those terms pursuant to Section
30 25142.

31 (d) Notwithstanding its prior approval, an agreement of
32 merger may be amended prior to the filing of the agreement of
33 merger if the amendment is approved by each constituent
34 corporation in the same manner as the original agreement of
35 merger. If the agreement of merger as so amended and approved
36 is also approved by each of the other parties to the agreement of
37 merger, as so amended it shall then constitute the agreement of
38 merger.

39 (e) The board of a constituent corporation may, in its
40 discretion, abandon a merger, subject to the contractual rights, if

1 any, of third parties, including other parties to the agreement of
2 merger, without further approval by the members (Section
3 12224), at any time before the merger is effective.

4 (f) Each constituent corporation shall sign the agreement of
5 merger by its chairperson of the board, president, or a vice
6 president and also by its secretary or an assistant secretary acting
7 on behalf of their respective corporations.

8 (g) After required approvals of the merger by each constituent
9 corporation and each other party to the merger, the surviving
10 party shall file a copy of the agreement of merger with an
11 officers' certificate of each constituent domestic and foreign
12 corporation attached stating the total number of outstanding
13 shares or membership interests of each class entitled to vote on
14 the merger (and identifying any other person or persons whose
15 approval is required), that the agreement of merger in the form
16 attached or its principal terms, as required, were approved by that
17 corporation by a vote of a number of shares or membership
18 interests of each class which equaled or exceeded the vote
19 required, specifying each class entitled to vote and the percentage
20 vote required of each class, and, if applicable, by that other
21 person or persons whose approval is required.

22 If equity securities of a parent party (Section 12242.6) are to be
23 issued in the merger, the officers' certificate or certificate of
24 merger of the controlled party shall state either that no vote of the
25 shareholders of the parent party was required or that the required
26 vote was obtained. The merger and any amendment of the
27 articles of the surviving corporation, if applicable, contained in
28 the agreement of merger shall be effective upon the filing of the
29 agreement of merger, subject to the provisions of subdivision (i).
30 If a domestic reciprocal insurer organized after 1974 to provide
31 medical malpractice insurance is a party to the merger, the
32 agreement of merger or certificate of merger shall not be filed
33 until there has been filed the certificate issued by the Insurance
34 Commissioner approving the merger pursuant to Section 1555 of
35 the Insurance Code.

36 In lieu of an officers' certificate, a certificate of merger, on a
37 form prescribed by the Secretary of State, shall be filed for each
38 constituent other business entity. The certificate of merger shall
39 be executed and acknowledged by each domestic constituent
40 limited liability company by all of the managers of the limited

1 liability company (unless a lesser number is specified in its
2 articles of organization or operating agreement) and by each
3 domestic constituent limited partnership by all general partners
4 (unless a lesser number is provided in its certificate of limited
5 partnership or partnership agreement) and by each domestic
6 constituent general partnership by two partners (unless a lesser
7 number is provided in its partnership agreement) and by each
8 foreign constituent general partnership or foreign constituent
9 limited liability company by one or more managers and by each
10 foreign constituent limited partnership by one or more general
11 partners, and by each constituent reciprocal insurer by the
12 chairperson of the board, president, or vice president, and by the
13 secretary or assistant secretary, or, if a constituent reciprocal
14 insurer has not appointed such officers, by the chairperson of the
15 board, president, or vice president, and by the secretary or
16 assistant secretary of the constituent reciprocal insurer's
17 attorney-in-fact, and by each other party to the merger by those
18 persons required or authorized to execute the certificate of
19 merger by the laws under which that party is organized,
20 specifying for such party the provision of law or other basis for
21 the authority of the signing persons.

22 The certificate of merger shall set forth, if a vote of the
23 shareholders, members, partners, or other holders of interests of
24 the constituent other business entity was required, a statement
25 setting forth the total number of outstanding interests of each
26 class entitled to vote on the merger and that the agreement of
27 merger or its principal terms, as required, were approved by a
28 vote of the number of interests of each class which equaled or
29 exceeded the vote required, specifying each class entitled to vote
30 and the percentage vote required of each class, and any other
31 information required to be set forth under the laws under which
32 the constituent other business entity is organized, including, if a
33 domestic limited partnership is a party to the merger, subdivision
34 (a) of Section 15678.4, if a domestic general partnership is a
35 party to the merger, subdivision (b) of Section 16915, and, if a
36 domestic limited liability company is a party to the merger,
37 subdivision (a) of Section 17552. The certificate of merger for
38 each constituent foreign other business entity, if any, shall also
39 set forth the statutory or other basis under which that foreign

1 other business entity is authorized by the laws under which it is
2 organized to effect the merger.

3 The Secretary of State may certify a copy of the agreement of
4 merger separate from the officers' certificates and certificates of
5 merger attached thereto.

6 (h) a copy of an agreement of merger certified on or after the
7 effective date by an official having custody thereof has the same
8 force in evidence as the original and, except as against the state,
9 is conclusive evidence of the performance of all conditions
10 precedent to the merger, the existence on the effective date of the
11 surviving party to the merger, the performance of the conditions
12 necessary to the adoption of any amendment to the articles, if
13 applicable, contained in the agreement of merger, and of the
14 merger of the constituent corporations, either by themselves or
15 together with other constituent parties, into the surviving party to
16 the merger.

17 (i) (1) The merger of domestic corporations with foreign
18 corporations or foreign other business entities in a merger in
19 which one or more other business entities is a party shall comply
20 with subdivisions (a) and (g) and this subdivision.

21 (2) Subject to subdivision (c) of Section 12214 and paragraph
22 (3), the merger shall be effective as to each domestic constituent
23 corporation and domestic constituent other business entity upon
24 filing of the agreement of merger with attachments as provided in
25 subdivision (g).

26 (3) If the surviving party is a foreign corporation or foreign
27 other business entity, except as provided in paragraph (4), the
28 merger shall be effective as to any domestic disappearing
29 corporation as of the time of effectiveness in the foreign
30 jurisdiction upon the filing in this state of a copy of the
31 agreement of merger with an officers' certificate of the surviving
32 foreign corporation and of each constituent foreign and domestic
33 corporation and a certificate of merger of each constituent other
34 business entity attached, which officers' certificates and
35 certificates of merger shall conform to the requirements of
36 subdivision (g).

37 If one or more domestic other business entities is a
38 disappearing party in a merger pursuant to this subdivision in
39 which a foreign other business entity is the surviving entity, a
40 certificate of merger required by the laws under which each

1 domestic other business entity is organized, including
2 subdivision (a) of Section 15678.4, subdivision (b) of Section
3 16915 or subdivision (a) of Section 17552, if applicable, shall
4 also be filed at the same time as the filing of the agreement of
5 merger.

6 (4) If the date of the filing in this state pursuant to this
7 subdivision is more than six months after the time of the
8 effectiveness in the foreign jurisdiction, or if the powers of a
9 domestic disappearing corporation are suspended at the time of
10 effectiveness in the foreign jurisdiction, the merger shall be
11 effective as to the domestic disappearing corporation as of the
12 date of filing in this state.

13 (5) Each foreign disappearing corporation that is qualified for
14 the transaction of intrastate business shall automatically by the
15 filing pursuant to subdivision (g) surrender its right to transact
16 intrastate business as of the date of filing in this state or, if later,
17 the effective date of the merger. With respect to each foreign
18 disappearing other business entity previously registered for the
19 transaction of intrastate business in this state, the filing of the
20 agreement of merger pursuant to subdivision (g) automatically
21 has the effect of a cancellation of registration for that foreign
22 other business entity without the necessity of the filing of a
23 certificate of cancellation.

24 SEC. 32. Section 12550.5 of the Corporations Code is
25 amended to read:

26 12550.5. (a) Upon merger pursuant to this chapter, a
27 surviving domestic or foreign corporation or other business entity
28 shall be deemed to have assumed the liability of each
29 disappearing domestic or foreign corporation or other business
30 entity that is taxed under Part 10 (commencing with Section
31 17001) of, or under Part 11 (commencing with Section 23001)
32 of, Division 2 of the Revenue and Taxation Code for the
33 following:

34 (1) To prepare and file, or to cause to be prepared and filed,
35 tax and information returns otherwise required of that
36 disappearing entity as specified in Chapter 2 (commencing with
37 Section 18501) of Part 10.2 of Division 2 of the Revenue and
38 Taxation Code.

39 (2) To pay any tax liability determined to be due.

1 (b) If the surviving entity is a domestic limited liability
2 company, domestic corporation, or registered limited liability
3 partnership or a foreign limited liability company, foreign limited
4 liability partnership, or foreign corporation that is registered or
5 qualified to do business in California, the Secretary of State shall
6 notify the Franchise Tax Board of the merger.

7 SEC. 33. Section 12628 of the Corporations Code is amended
8 to read:

9 12628. (a) Upon the final settlement of the accounts of the
10 directors or other persons appointed pursuant to Section 12625
11 and the determination that the corporation's affairs are in
12 condition for it to be dissolved, the court may make an order
13 declaring the corporation duly wound up and dissolved. The
14 order shall declare:

15 (1) That the corporation has been duly wound up, that a final
16 franchise tax return, as described by Section 23332 of the
17 Revenue and Taxation Code, has been filed with the Franchise
18 Tax Board, as required under Part 10.2 (commencing with
19 Section 18401) of Division 2 of the Revenue and Taxation Code
20 and that its known debts and liabilities have been paid or
21 adequately provided for, or that those debts and liabilities have
22 been paid as far as its assets permitted, as the case may be. If
23 there are known debts or liabilities for payment of which
24 adequate provision has been made, the order shall state what
25 provision has been made, setting forth the name and address of
26 the corporation, person, or governmental agency that has
27 assumed or guaranteed the payment, or the name and address of
28 the depository with which deposit has been made or such other
29 information as may be necessary to enable the creditor or other
30 person to whom payment is to be made to appear and claim
31 payment of the debt or liability.

32 (2) That its known assets have been distributed to the persons
33 entitled thereto or that it acquired no known assets, as the case
34 may be.

35 (3) That the accounts of directors or such other persons have
36 been settled and that they are discharged from their duties and
37 liabilities to creditors and members.

38 (4) That the corporation is dissolved.

39 (b) The court may make such additional orders and grant such
40 further relief as it deems proper upon the evidence submitted.

1 (c) Upon the making of the order declaring the corporation
2 dissolved, corporate existence shall cease except for the purposes
3 of further winding up if needed; and the directors or such other
4 persons shall be discharged from their duties and liabilities,
5 except in respect to completion of the winding up.

6 SEC. 34. Section 12629 of the Corporations Code is amended
7 to read:

8 12629. Whenever a corporation is dissolved or its existence
9 forfeited by order, decree, or judgment of a court, a copy of the
10 order, decree or judgment, certified by the clerk of court, shall
11 forthwith be filed. The Secretary of State shall notify the
12 Franchise Tax Board of the dissolution.

13 SEC. 35. Section 12635 of the Corporations Code is amended
14 to read:

15 12635. (a) When a corporation has been completely wound
16 up without court proceedings therefor, a majority of the directors
17 then in office shall sign and verify a certificate of dissolution
18 stating:

19 (1) That the corporation has been completely wound up.

20 (2) That its known debts and liabilities have been actually
21 paid, or adequately provided for, or paid or adequately provided
22 for as far as its assets permitted, or that it has incurred no known
23 debts or liabilities, as the case may be. If there are known debts
24 or liabilities for payment of which adequate provision has been
25 made, the certificate shall state what provision has been made,
26 setting forth the name and address of the corporation, person or
27 governmental agency that has assumed or guaranteed the
28 payment, or the name and address of the depository with which
29 deposit has been made or such other information as may be
30 necessary to enable the creditor or other person to whom
31 payment is to be made to appear and claim payment of the debt
32 or liability.

33 (3) That its known assets have been distributed to the persons
34 entitled thereto or that it acquired no known assets, as the case
35 may be.

36 (4) That the corporation is dissolved.

37 (5) That a final franchise tax return, as described by Section
38 23332 of the Revenue and Taxation Code, has been or will be
39 filed with the Franchise Tax Board, as required under Part 10.2

1 (commencing with Section 18401) of Division 2 of the Revenue
2 and Taxation Code.

3 (b) The certificate of dissolution shall be filed and thereupon
4 the corporate existence shall cease, except for the purpose of
5 further winding up if needed. The Secretary of State shall notify
6 the Franchise Tax Board of the dissolution.

7 SEC. 36. Section 15678.4 of the Corporations Code is
8 amended to read:

9 15678.4. (a) If the surviving entity is a limited partnership or
10 an other business entity (other than a corporation in a merger in
11 which a domestic corporation is a constituent party), after
12 approval of a merger by the constituent limited partnerships and
13 any constituent other business entities, the constituent limited
14 partnerships and constituent other business entities shall file a
15 certificate of merger in the office of, and on a form prescribed
16 by, the Secretary of State. The certificate of merger shall be
17 executed and acknowledged by each domestic constituent limited
18 partnership by all general partners (unless a lesser number is
19 provided in the certificate of limited partnership of the domestic
20 constituent limited partnership) and by each foreign constituent
21 limited partnership by one or more general partners, and by each
22 constituent other business entity by those persons required to
23 execute the certificate of merger by the laws under which the
24 constituent other business entity is organized. The certificate of
25 merger shall set forth all of the following:

26 (1) The names and the Secretary of State's file numbers, if
27 any, of each of the constituent limited partnerships and
28 constituent other business entities, separately identifying the
29 disappearing limited partnerships and disappearing other
30 business entities and the surviving limited partnership or
31 surviving other business entity.

32 (2) If a vote of the limited partners was required under Section
33 15678.2, a statement setting forth the total number of outstanding
34 interests of each class entitled to vote on the merger and that the
35 principal terms of the agreement of merger were approved by a
36 vote of the number of interests of each class which equaled or
37 exceeded the vote required, specifying each class entitled to vote
38 and the percentage vote required of each class.

39 (3) If the surviving entity is a limited partnership and not an
40 other business entity, any change required to the information set

1 forth in the certificate of limited partnership of the surviving
2 limited partnership resulting from the merger, including any
3 change in the name of the surviving limited partnership resulting
4 from the merger. The filing of a certificate of merger setting forth
5 any such changes to the certificate of limited partnership of the
6 surviving limited partnership shall have the effect of the filing of
7 a certificate of amendment by the surviving limited partnership,
8 and the surviving limited partnership need not file a certificate of
9 amendment under Section 15622 to reflect those changes.

10 (4) The future effective date or time (which shall be a date or
11 time certain not more than 90 days subsequent to the date of
12 filing) of the merger, if the merger is not to be effective upon the
13 filing of the certificate of merger with the office of the Secretary
14 of State.

15 (5) If the surviving entity is an other business entity or a
16 foreign limited partnership, the full name, type of entity, legal
17 jurisdiction in which the entity was organized and by whose laws
18 its internal affairs are governed, and the address of the principal
19 place of business of the entity.

20 (6) Any other information required to be stated in the
21 certificate of merger by the laws under which each constituent
22 other business entity is organized, including, if a domestic
23 corporation is a party to the merger, paragraph (2) of subdivision
24 (g) of Section 1113.

25 If the surviving entity is a foreign limited partnership in a
26 merger in which a domestic corporation is a disappearing other
27 business entity, a copy of the agreement of merger and
28 attachments as required under paragraph (1) of subdivision (g) of
29 Section 1113 shall be filed at the same time as the filing of the
30 certificate of merger.

31 (b) If the surviving entity is a domestic corporation or a
32 foreign corporation in a merger in which a domestic corporation
33 is a constituent party, after approval of the merger by the
34 constituent limited partnerships and constituent other business
35 entities, the surviving corporation shall file in the office of the
36 Secretary of State a copy of the agreement of merger and
37 attachments required under paragraph (1) of subdivision (g) of
38 Section 1113. The certificate of merger shall be executed and
39 acknowledged by each domestic constituent limited partnership
40 by all general partners, unless a lesser number is provided in the

1 certificate of limited partnership of the domestic constituent
2 limited partnership.

3 (c) A certificate of merger or the agreement of merger, as is
4 applicable under subdivision (a) or (b), shall have the effect of
5 the filing of a certificate of cancellation for each disappearing
6 limited partnership, and no disappearing limited partnership need
7 file a certificate of dissolution or a certificate of cancellation
8 under Section 15623 as a result of the merger.

9 (d) ~~By~~ *If a disappearing other business entity is a foreign*
10 *corporation qualified to transact intrastate business in this state,*
11 *by* the filing of the certificate of merger or agreement of merger,
12 as is applicable, the foreign corporation shall automatically
13 surrender its right to transact intrastate business.

14 SEC. 37. Section 15678.10 of the Corporations Code is
15 amended to read:

16 15678.10. (a) Upon merger pursuant to this article, a
17 surviving domestic or foreign limited partnership or other
18 business entity shall be deemed to have assumed the liability of
19 each disappearing domestic or foreign limited partnership or
20 other business entity that is taxed under Part 10 (commencing
21 with Section 17001) of, or under Part 11 (commencing with
22 Section 23001) of, Division 2 of the Revenue and Taxation Code
23 for the following:

24 (1) To prepare and file, or to cause to be prepared and filed,
25 tax and information returns otherwise required of that
26 disappearing entity as specified in Chapter 2 (commencing with
27 Section 18501) of Part 10.2 of Division 2 of the Revenue and
28 Taxation Code.

29 (2) To pay any tax liability determined to be due.

30 (b) The Secretary of State shall notify the Franchise Tax Board
31 of the merger.

32 SEC. 38. Section 16915.5 of the Corporations Code is
33 amended to read:

34 16915.5. (a) Upon merger pursuant to this article, a surviving
35 domestic or foreign partnership or other business entity shall be
36 deemed to have assumed the liability of each disappearing
37 domestic or foreign partnership or other business entity that is
38 taxed under Part 10 (commencing with Section 17001) of, or
39 under Part 11 (commencing with Section 23001) of, Division 2
40 of the Revenue and Taxation Code for the following:

1 (1) To prepare and file, or to cause to be prepared and filed,
2 tax and information returns otherwise required of that
3 disappearing entity as specified in Chapter 2 (commencing with
4 Section 18501) of Part 10.2 of Division 2 of the Revenue and
5 Taxation Code.

6 (2) To pay any tax liability determined to be due.

7 (b) If the surviving entity is a domestic limited liability
8 company, domestic corporation, or registered limited liability
9 partnership or a foreign limited liability company, foreign limited
10 liability partnership, or foreign corporation that is registered or
11 qualified to do business in California, the Secretary of State shall
12 notify the Franchise Tax Board of the merger.

13 SEC. 39. Section 16954 of the Corporations Code is amended
14 to read:

15 16954. (a) The registration of a registered limited liability
16 partnership may be amended by an amended registration
17 executed by one or more partners authorized to execute an
18 amended registration and filed with the Secretary of State, as
19 soon as reasonably practical after any information set forth in the
20 registration or previously filed amended registration becomes
21 inaccurate or to add information to the registration or amended
22 registration.

23 (b) If a registered limited liability partnership ceases to be a
24 registered limited liability partnership, it shall file with the
25 Secretary of State a notice, executed by one or more partners
26 authorized to execute the notice, that it is no longer a registered
27 limited liability partnership. The notice shall state that a final
28 annual tax return, as described by Section 17948.3 of the
29 Revenue and Taxation Code, has been or will be filed with the
30 Franchise Tax Board, as required under Part 10.2 (commencing
31 with Section 18401) of Division 2 of the Revenue and Taxation
32 Code.

33 (c) An amendment pursuant to subdivision (a) and a notice
34 pursuant to subdivision (b) shall each be accompanied by a fee as
35 set forth in subdivision (c) of Section 12189 of the Government
36 Code.

37 (d) The Secretary of State shall provide forms for an amended
38 registration under subdivision (a) and a notice under subdivision
39 (b).

1 (e) A notice of cessation, signed ~~and verified~~ pursuant to
2 subdivision (b), shall be filed with the Secretary of State. The
3 Secretary of State shall notify the Franchise Tax Board of the
4 cessation.

5 SEC. 40. Section 16960 of the Corporations Code is amended
6 to read:

7 16960. (a) The registration of a foreign limited partnership
8 may be amended by an amended registration executed by one or
9 more partners authorized to execute an amended registration and
10 filed with the Secretary of State, as soon as reasonably practical
11 after any information set forth in the registration or previously
12 filed amended registration becomes inaccurate, to add
13 information to the registration or amended registration or to
14 withdraw its registration as a foreign limited liability partnership.

15 (b) If a foreign limited partnership ceases to be a limited
16 liability partnership, it shall file with the Secretary of State a
17 notice, executed by one or more partners authorized to execute
18 the notice, that it is no longer a foreign limited liability
19 partnership. The notice shall state that a final annual tax return,
20 as described by Section 17948.3 of the Revenue and Taxation
21 Code, has been or will be filed with the Franchise Tax Board, as
22 required under Part 10.2 (commencing with Section 18401) of
23 the Revenue and Taxation Code.

24 (c) A foreign limited liability partnership that is, but is no
25 longer required to be, registered under Section 16959 may
26 withdraw its registration by filing a notice with the Secretary of
27 State, executed by one or more partners authorized to execute the
28 notice.

29 (d) The Secretary of State shall provide forms for an amended
30 registration under subdivision (a) and notices under subdivisions
31 (b) and (c).

32 (e) The filing of amended registration forms pursuant to
33 subdivision (a) and a notice pursuant to subdivision (b) or (c)
34 shall each be accompanied by a fee as set forth in subdivision (d)
35 of Section 12189 of the Government Code.

36 (f) A notice of cessation, signed pursuant to subdivision (b),
37 shall be filed with the Secretary of State. The Secretary of State
38 shall notify the Franchise Tax Board of the cessation.

39 SEC. 41. Section 17350.5 of the Corporations Code is
40 amended to read:

1 17350.5. (a) Notwithstanding any other provision of this
2 division, if a domestic limited liability company has not
3 conducted any business, only a majority of the members, or, if
4 there are no members, the majority of the managers, if any, or if
5 no members or managers, the person or a majority of the persons
6 signing the articles of organization, may execute and
7 acknowledge a certificate of cancellation of articles of
8 organization, on a form prescribed by the Secretary of State,
9 stating all of the following:

10 (1) The name of the domestic limited liability company and
11 the Secretary of State's file number.

12 (2) That the certificate of cancellation is being filed within 12
13 months from the date the articles of organization were filed.

14 (3) That the limited liability company does not have any debts
15 or other liabilities, except as provided in paragraph (4).

16 (4) That a final franchise tax return, as described by Section
17 23332 of the Revenue and Taxation Code, or a final annual tax
18 return, as described by Section 17947 of the Revenue and
19 Taxation Code, has been or will be filed with the Franchise Tax
20 Board, as required under Part 10.2 (commencing with Section
21 18401) of Division 2 of the Revenue and Taxation Code.

22 (5) That the known assets of the limited liability company
23 remaining after payment of, or adequately providing for, known
24 debts and liabilities have been distributed to the persons entitled
25 thereto or that the limited liability company acquired no known
26 assets, as the case may be.

27 (6) That the limited liability company has not conducted any
28 business from the time of the filing of the articles of
29 organization.

30 (7) That a majority of the managers or members voted, or, if
31 no managers or members, the person or a majority of the persons
32 signing the articles of organization, voted to dissolve the limited
33 liability company.

34 (8) If the limited liability company has received payments for
35 interests from investors, that those payments have been returned
36 to those investors.

37 (b) A certificate of cancellation executed and acknowledged
38 pursuant to subdivision (a) shall be filed with the Secretary of
39 State within 12 months from the date that the articles of

1 organization were filed. The Secretary of State shall notify the
2 Franchise Tax Board of the cancellation.

3 (c) Upon filing a certificate of cancellation pursuant to
4 subdivision (a), a limited liability company shall be cancelled
5 and its powers, rights, and privileges shall cease.

6 (d) A domestic limited liability company that filed articles of
7 organization on or after January 1, 2004, and that meets all of the
8 conditions described in subdivision (a) may file a certificate of
9 cancellation under this section.

10 SEC. 42. Section 17355 of the Corporations Code is amended
11 to read:

12 17355. (a) (1) Causes of action against a dissolved limited
13 liability company, whether arising before or after the dissolution
14 of the limited liability company, may be enforced against any of
15 the following:

16 (A) Against the dissolved limited liability company, to the
17 extent of its undistributed assets, including, without limitation,
18 any insurance assets held by the limited liability company that
19 may be available to satisfy claims.

20 (B) If any of the assets of the dissolved limited liability
21 company have been distributed to members, against members of
22 the dissolved limited liability company to the extent of the
23 limited liability company assets distributed to them upon
24 dissolution of the limited liability company.

25 Any member compelled to return distributed assets in an
26 amount that exceeds the sum of the member's pro rata share of
27 the claim and the amount for which the member could otherwise
28 be held liable under Section 17254 or 17255 may seek
29 contribution for the excess from any other member or manager,
30 up to the sum of that other person's pro rata share of the claim
31 and that other person's liabilities under Section 17254 or 17255.

32 (2) Except as set forth in subdivision (c), all causes of action
33 against a member of a dissolved limited liability company arising
34 under this section are extinguished unless the claimant
35 commences a proceeding to enforce the cause of action against
36 that member of a dissolved limited liability company prior to the
37 earlier of the following:

38 (A) The expiration of the statute of limitations applicable to
39 the cause of action.

1 (B) Four years after the effective date of the dissolution of the
2 limited liability company.

3 (3) As a matter of procedure only, and not for purposes of
4 determining liability, members of the dissolved limited liability
5 company may be sued in the name of the limited liability
6 company upon any cause of action against the limited liability
7 company. This section does not affect the rights of the limited
8 liability company or its creditors under Sections 17254 and
9 17255, or the rights, if any, of creditors under the Uniform
10 Fraudulent Transfer Act, that may arise against the member of a
11 limited liability company.

12 (b) Summons or other process against a limited liability
13 company may be served by delivering a copy thereof to a
14 manager, member, officer, or person having charge of its assets
15 or, if no such person can be found, to any agent upon whom
16 process might be served at the time of dissolution. If none of
17 those persons can be found with due diligence and it is so shown
18 by affidavit to the satisfaction of the court, then the court may
19 make an order that summons or other process be served upon the
20 dissolved limited liability company by personally delivering a
21 copy thereof, together with a copy of the order, to the Secretary
22 of State or an assistant or deputy Secretary of State. Service in
23 this manner is deemed complete on the 10th day after delivery of
24 the process to the Secretary of State. Upon receipt of process and
25 the fee therefor, the Secretary of State shall give notice to the
26 limited liability company as provided in Section 1702.

27 (c) Every limited liability company shall survive and continue
28 to exist indefinitely for the purpose of being sued in any quiet
29 title action. Any judgment rendered in any such action shall bind
30 each and all of its members or other persons having any equity or
31 other interest in the limited liability company, to the extent of
32 their interest therein, and the action shall have the same force and
33 effect as an action brought under the provisions of Sections
34 410.50 and 410.60 of the Code of Civil Procedure. Service of
35 summons or other process in any action may be made as
36 provided in Chapter 4 (commencing with Section 413.10) of
37 Title 5 of Part 2 of the Code of Civil Procedure or as provided in
38 subdivision (b).

39 (d) For purposes of Article 4 (commencing with Section
40 19071) of Chapter 4 of Part 10.2 of Division 2 of the Revenue

1 and Taxation Code, the liability described in this section shall be
2 considered a liability at law within respect to a dissolved limited
3 liability company.

4 SEC. 43. Section 17356 of the Corporations Code is amended
5 to read:

6 17356. (a) (1) The managers shall cause to be filed in the
7 office of, and on a form prescribed by, the Secretary of State, a
8 certificate of dissolution upon the dissolution of the limited
9 liability company pursuant to Chapter 8 (commencing with
10 Section 17350), unless the event causing the dissolution is that
11 specified in subdivision (c) of Section 17350, in which case the
12 managers or members conducting the winding up of the limited
13 liability company's affairs pursuant to Section 17352 shall have
14 the obligation to file the certificate of dissolution.

15 (2) The certificate of dissolution shall set forth all of the
16 following:

17 (A) The name of the limited liability company and the
18 Secretary of State's file number.

19 (B) Any other information the managers or members filing the
20 certificate of dissolution determine to include.

21 (3) If a dissolution pursuant to subdivision (b) of Section
22 17350 is made by the vote of all of the members and a statement
23 to that effect is added to the certificate of cancellation of articles
24 of organization pursuant to subdivision (b), the separate filing of
25 a certificate of dissolution pursuant to this subdivision is not
26 required.

27 (b) (1) The managers or members who filed the certificate of
28 dissolution shall cause to be filed in the office of, and on a form
29 prescribed by, the Secretary of State, a certificate of cancellation
30 of articles of organization upon the completion of the winding up
31 of the affairs of the limited liability company pursuant to Chapter
32 8 (commencing with Section 17350), unless the event causing the
33 dissolution is that specified in subdivision (c) of Section 17350,
34 in which case the managers or members conducting the winding
35 up of the limited liability company's affairs pursuant to Section
36 17352 shall have the obligation to file the certificate of
37 cancellation of articles of organization.

38 (2) The certificate of cancellation of articles of organization
39 shall set forth all of the following:

1 (A) The name of the limited liability company and the
2 Secretary of State's file number.

3 (B) That a final franchise tax return, as described by Section
4 23332 of the Revenue and Taxation Code, or a final annual tax
5 return, as described by Section 17947 of the Revenue and
6 Taxation Code, has been or will be filed with the Franchise Tax
7 board, as required under Part 10.2 (commencing with Section
8 18401) of Division 2 of the Revenue and Taxation Code.

9 (C) Any other information the managers or members filing the
10 certificate of cancellation of articles of organization determine to
11 include.

12 (3) The Secretary of State shall notify the Franchise Tax Board
13 of the filing.

14 SEC. 44. Section 17552 of the Corporations Code is amended
15 to read:

16 17552. (a) If the surviving entity is a limited liability
17 company or an other business entity (other than a corporation in
18 a merger in which a domestic corporation is a constituent party),
19 after approval of a merger by the constituent limited liability
20 companies and any constituent other business entities, the
21 constituent limited liability companies or constituent other
22 business entities shall file a certificate of merger in the office of,
23 and on a form prescribed by, the Secretary of State. The
24 certificate of merger shall be executed and acknowledged by
25 each domestic constituent limited liability company by all of the
26 managers of the limited liability company, unless a lesser number
27 is specified in the articles of organization or the operating
28 agreement of the constituent limited liability company, and by
29 each constituent foreign limited liability company and each
30 constituent other business entity by those persons required to
31 execute the certificate or agreement of merger by the laws under
32 which the constituent foreign limited liability company or other
33 business entity is organized. The certificate of merger shall set
34 forth all of the following:

35 (1) The names and the Secretary of State's file numbers, if
36 any, of each of the constituent limited liability companies and
37 constituent other business entities, separately identifying the
38 disappearing limited liability companies and disappearing other
39 business entities and the surviving limited liability company or
40 surviving other business entity.

1 (2) If a vote of the members was required under Section
2 17551, a statement setting forth the total number of outstanding
3 interests of each class entitled to vote on the merger and that the
4 principal terms of the agreement of merger were approved by a
5 vote of the number of interests of each class that equaled or
6 exceeded the vote required, specifying each class entitled to vote
7 and the percentage vote required of each class.

8 (3) If the surviving entity is a limited liability company and
9 not an other business entity, any change required to the
10 information set forth in the articles of organization of the
11 surviving limited liability company resulting from the merger,
12 including any change in the name of the surviving limited
13 liability company resulting from the merger. The filing of a
14 certificate of merger setting forth any changes to the articles of
15 organization of the surviving limited liability company shall have
16 the effect of the filing of an amendment to the articles of
17 organization by the surviving limited liability company, and the
18 surviving limited liability company need not file a certificate of
19 amendment under Section 17054 to reflect those changes.

20 (4) The future effective date or time (which shall be a date or
21 time certain not more than 90 days subsequent to the date of
22 filing) of the merger, if the merger is not to be effective upon the
23 filing of the certificate of merger with the office of the Secretary
24 of State.

25 (5) If the surviving entity is an other business entity or a
26 foreign limited liability company, the full name, type of entity,
27 legal jurisdiction in which the entity was organized and by whose
28 laws its internal affairs are governed, and the address of the
29 principal place of business of the entity.

30 (6) Any other information required to be stated in the
31 certificate of merger by the laws under which each constituent
32 other business entity is organized, including, if a domestic
33 corporation is a party to the merger, paragraph (2) of subdivision
34 (g) of Section 1113.

35 If the surviving entity is a foreign limited liability company in
36 a merger in which a domestic corporation is a disappearing other
37 business entity, a copy of the agreement of merger and
38 attachments as required under paragraph (1) of subdivision (g) of
39 Section 1113 shall be filed at the same time as the filing of the
40 certificate of merger.

1 (b) If the surviving entity is a domestic corporation or a
2 foreign corporation in a merger in which a domestic corporation
3 is a constituent party, after approval of the merger by the
4 constituent limited liability companies and constituent other
5 business entities, the surviving corporation shall file in the office
6 of the Secretary of State a copy of the agreement of merger and
7 attachments required under paragraph (1) of subdivision (g) of
8 Section 1113. The certificate of merger shall be executed and
9 acknowledged by each domestic constituent limited liability
10 company by all of the managers of the limited liability company
11 unless a lesser number is specified in the articles of organization
12 or the operating agreement of the domestic constituent limited
13 liability company.

14 (c) A certificate of merger, or the agreement of merger, as is
15 applicable under subdivisions (a) or (b), shall have the effect of
16 the filing of a certificate of cancellation of articles of
17 organization for each disappearing limited liability company and
18 no disappearing limited liability company need file a certificate
19 of cancellation of articles of organization under Section 17356 as
20 a result of the merger.

21 (d) If a disappearing other business entity is a foreign
22 corporation qualified to transact intrastate business in this state,
23 the filing of the certificate of merger or the agreement of merger
24 shall automatically surrender its right to transact intrastate
25 business.

26 SEC. 45. Section 17554.5 of the Corporations Code is
27 amended to read:

28 17554.5. (a) Upon merger pursuant to this chapter, a
29 surviving domestic or foreign limited liability company or other
30 business entity shall be deemed to have assumed the liability of
31 each disappearing domestic or foreign limited liability company
32 or other business entity that is taxed under Part 10 (commencing
33 with Section 17001) of, or under Part 11 (commencing with
34 Section 23001) of, Division 2 of the Revenue and Taxation Code
35 for the following:

36 (1) To prepare and file, or to cause to be prepared and filed,
37 tax and information returns otherwise required of that
38 disappearing entity as specified in Chapter 2 (commencing with
39 Section 18501) of Part 10.2 of Division 2 of the Revenue and
40 Taxation Code.

1 (2) To pay any tax liability determined to be due.

2 (b) If the surviving entity is a domestic limited liability
3 company, domestic corporation, or registered limited liability
4 partnership or a foreign limited liability company, foreign limited
5 liability partnership, or foreign corporation that is registered or
6 qualified to do business in California, the Secretary of State shall
7 notify the Franchise Tax Board of the merger.

8 SEC. 46. Section 3126 of the Financial Code is amended to
9 read:

10 3126. (a) When the commissioner has completed the
11 liquidation of the bank, he or she shall petition the court for an
12 order declaring the bank duly wound up and dissolved.

13 (b) After such notice as the court may direct and a hearing, the
14 court may make an order declaring the bank duly wound up and
15 dissolved. Such order shall declare:

16 (1) That the bank has been duly wound up;

17 (2) That *a final franchise tax return, as described by Section*
18 *23332 of the Revenue and Taxation Code, has been filed with the*
19 *Franchise Tax Board as required under Part 10.2 (commencing*
20 *with Section 18401) of Division 2 of the Revenue and Taxation*
21 *Code, and that any tax or penalty due under the Corporation Tax*
22 *Law has been ~~paid or secured~~ paid, and that the bank's ~~other~~*
23 *known debts and liabilities have been paid or adequately*
24 *provided for, or that such taxes, penalties, debts, and liabilities*
25 *have been paid so far as the bank's assets permitted, as the case*
26 *may be. If there are known debts or liabilities for the payment of*
27 *which adequate provision has been made, the order shall describe*
28 *such provision, setting forth such information as may be*
29 *necessary to enable the creditor or other person to whom*
30 *payment is to be made to appear and claim payment of the debt*
31 *or liability;*

32 (3) That all known assets of the bank have been distributed to
33 its shareholders or wholly applied on account of the bank's debts
34 and liabilities; and

35 (4) That the bank is dissolved.

36 (c) The court may make such additional orders and grant such
37 further relief as it deems proper upon the evidence submitted.

38 (d) Upon the making of the order declaring the bank dissolved,
39 the corporate existence of the bank shall cease, except for the
40 purposes of any necessary further winding up.

1 (e) Upon the making of the order declaring the bank dissolved,
2 the commissioner shall forthwith file with the Secretary of State
3 a copy of such order, certified by the clerk of the court.

4 SEC. 47. Section 5758 of the Financial Code is amended to
5 read:

6 5758. The executed agreement, or an executed counterpart of
7 it and the respective certificate of each constituent association or
8 any other corporation and of the surviving association shall be
9 filed with the Secretary of State. Neither the agreement nor any
10 certificate shall be filed, however, unless the commissioner's
11 written approval is attached. The effective date of the merger or
12 consolidation under this article shall be the date of the filing with
13 the Secretary of State of the copy of the approved agreement of
14 merger or consolidation. A copy of the approved agreement
15 certified by the Secretary of State shall be filed with the
16 commissioner.

17 If the resulting association is a federal association, the effective
18 date of merger shall be the date the merger is effective under
19 regulations of the Office of Thrift Supervision.

20 SEC. 48. Section 5760 of the Financial Code is amended to
21 read:

22 5760. (a) Any association, owning all the outstanding stock
23 of any corporation, may merge its wholly owned subsidiary
24 corporation if the laws under which the subsidiary corporation
25 exists permit a merger as this section provides. The association
26 shall submit to the commissioner for approval a certificate of
27 ownership in its name signed by its president or a vice president,
28 and its secretary or an assistant secretary, which shall be verified
29 by their affidavit, stating, in effect, that the matters set forth in
30 the certificate are true of their own knowledge. The certificate
31 shall set forth:

32 (1) That it owns all the outstanding stock of the merged
33 corporation.

34 (2) A copy of the resolution adopted by its board of directors
35 to merge the corporation, and to assume all of its obligations.

36 (3) The time and place of the meeting of the board of directors
37 at which the resolution was adopted, and the vote by which it was
38 adopted.

39 (b) If an association owns less than all the outstanding stock
40 but at least 90 percent of the outstanding shares of stock of each

1 class of a corporation or corporations, domestic or foreign, the
2 merger of the subsidiary corporation or corporations into the
3 parent association may be effected by resolutions adopted by the
4 boards of the parent and each subsidiary corporation, and the
5 filing of a certificate of ownership as provided in subdivision (d).
6 The resolution of the board of the parent association shall
7 provide for the merger, shall provide that the parent association
8 assumes all the liabilities of each subsidiary corporation and shall
9 set forth the securities, cash property or rights to be issued, paid,
10 delivered or granted by the parent association upon surrender of
11 each share of stock of each subsidiary corporation not owned by
12 the parent association. The resolution of the board of each
13 subsidiary corporation shall approve the fairness of the
14 consideration to be received for each share of stock of the
15 subsidiary corporation not owned by the parent association.

16 (c) Notwithstanding any other provision of law, in any merger
17 pursuant to this section, the parent association may change its
18 name regardless of whether the name so adopted is the same or
19 similar to that of one of the disappearing associations. In this
20 case the resolution shall provide for the amendment of articles to
21 change the name.

22 (d) After adoption of the resolution or resolutions of merger,
23 as provided under subdivision (b), the association shall submit to
24 the commissioner for approval a certificate of ownership in its
25 name signed by its president or a vice president, and its secretary
26 or an assistant secretary, which shall be verified by their
27 affidavit, stating, in effect, that the matters set forth in the
28 certificate are true of their own knowledge. The certificate shall
29 set forth:

30 (1) That the association owns at least 90 percent of the
31 outstanding stock of the merged corporations.

32 (2) A copy of the resolution adopted by the association's board
33 of directors to merge the corporation, to assume all of its
34 obligations, and including the resolution for a change of name if
35 applicable.

36 (3) A copy of the resolution or resolutions adopted by the
37 board of each subsidiary corporation, if required.

38 (4) The time and place of the meeting of the boards of
39 directors of the parent and the subsidiary at which the resolutions
40 were adopted, and the vote by which they were adopted.

1 (e) In the event all of the outstanding shares of stock of a
2 subsidiary domestic corporation party to a merger effected under
3 this section are not owned by the parent association immediately
4 prior to the merger, the parent association shall, at least 20 days
5 before the effective date of the merger, give notice to each
6 stockholder of the subsidiary corporation that the merger will
7 become effective on or after a specific date, which notice shall
8 contain (1) a copy of the resolutions of the boards of directors of
9 the parent and the subsidiary required by subdivision (b) above
10 and (2) the information which must accompany the notice
11 required by subdivision (a) of Section 1301 of the Corporations
12 Code. The notice shall be sent by mail addressed to the
13 stockholder at the address of the stockholder as it appears on the
14 records of the corporation. The stockholder shall have the right to
15 demand payment of cash for the shares of stock of the
16 stockholder pursuant to the provisions of Chapter 13
17 (commencing with Section 1300) of Division 1 of Title 1 of the
18 Corporations Code.

19 (f) If a merger authorized by this section is approved, the
20 commissioner shall attach to the certificate written approval, and
21 the certificate shall be filed with the Secretary of State. A copy of
22 the approved certificate certified by the Secretary of State shall
23 be filed with the commissioner. Thereupon, all of the estate,
24 property, rights, privileges, and franchises of the merged
25 corporation shall vest in and be held and enjoyed by the parent
26 association as fully as the same were before held and enjoyed by
27 the merged corporation, but subject to all the liabilities and
28 obligations of the merged corporation and the rights of all
29 creditors. The parent association shall not, however, thereby
30 acquire the right to engage in any business or to exercise any
31 right, privilege, or franchise of a kind which it could not lawfully
32 engage in or exercise under the provisions of this division. The
33 parent association shall be deemed to have assumed all the
34 liabilities and obligations of the merged corporation, and shall be
35 liable in the same manner as if it had itself incurred the liabilities
36 and obligations.

37 (g) If the merged subsidiary is a domestic corporation, a copy
38 of the certificate shall be filed in the office of the Secretary of
39 State on behalf of the subsidiary corporation. If the merged
40 subsidiary is a foreign corporation qualified for the transaction of

1 intrastate business in this state there shall be filed in the office of
2 the Secretary of State on behalf of the foreign subsidiary a
3 certificate of surrender and right to transact intrastate business as
4 provided in Section 2112 of the Corporations Code.

5 SEC. 49. Section 17937 is added to the Revenue and
6 Taxation Code, to read:

7 17937. (a) A limited partnership shall not be subject to the
8 taxes imposed by this chapter for a taxable year if the limited
9 partnership does all of the following:

10 (1) Files with the Franchise Tax Board a timely final annual
11 tax return for the preceding taxable year.

12 (2) Does not do business in this state after the end of the
13 taxable year for which the final annual tax return was filed.

14 (3) Files a certificate of cancellation with the Secretary of
15 State, pursuant to Section 15623 or 15696 of the Corporations
16 Code, before the end of the 12-month period beginning with the
17 date the final annual tax return was filed.

18 (b) For purposes of this section, a “final annual tax return” is a
19 return described in Section 18633 that is filed on or before the
20 due date of the return, as extended, that the taxpayer designates
21 in the manner prescribed by the Franchise Tax Board as the
22 taxpayer’s final annual return for purposes of the tax imposed
23 under this chapter. For purposes of this chapter, a “final annual
24 tax return” is a return filed pursuant to Section 18633 where the
25 taxpayer is not required to file a subsequent return to reflect the
26 imposition of tax under this chapter.

27 SEC. 50. Section 17945 of the Revenue and Taxation Code is
28 repealed.

29 SEC. 51. Section 17947 is added to the Revenue and
30 Taxation Code, to read:

31 17947. (a) A limited liability company shall not be subject to
32 the taxes imposed by this chapter for a taxable year if the limited
33 liability company does all of the following:

34 (1) Files with the Franchise Tax Board a timely final annual
35 tax return for the preceding taxable year.

36 (2) Does not do business in this state after the end of the
37 taxable year for which the final annual tax return was filed.

38 (3) Files a certificate of cancellation with the Secretary of
39 State, pursuant to Section 17356 or 17455 of the Corporations

1 Code, before the end of the 12-month period beginning with the
2 date the final annual tax return was filed.

3 (b) For purposes of this section, a “final annual tax return” is a
4 return described in Section 18633.5 that is filed on or before the
5 due date of the return, as extended, that the taxpayer designates
6 in the manner prescribed by the Franchise Tax Board as the
7 taxpayer’s final return for purposes of the tax imposed under this
8 chapter. For purposes of this chapter, a “final annual tax return”
9 is a return filed pursuant to Section 18633.5 where the taxpayer
10 is not required to file a subsequent return to reflect the imposition
11 of tax under this chapter.

12 SEC. 52. Section 17948.1 of the Revenue and Taxation Code
13 is repealed.

14 SEC. 53. Section 17948.3 is added to the Revenue and
15 Taxation Code, to read:

16 17948.3. (a) A registered limited liability partnership shall
17 not be subject to the taxes imposed by this chapter for a taxable
18 year if the registered limited liability partnership does all of the
19 following:

20 (1) Files with the Franchise Tax Board a timely final annual
21 tax return for the preceding taxable year.

22 (2) Does not do business within this state after the end of the
23 taxable year for which the final annual tax return was filed.

24 (3) Files a notice in accordance with ~~Section 16954 or 16960~~
25 *subdivision (b) of Section 16954 or subdivision (b) of Section*
26 *16960* of the Corporations Code with the Secretary of State
27 before the end of the 12-month period beginning with the date of
28 the final annual tax return was filed.

29 (b) For purposes of this section, a “final annual tax return” is a
30 return described in Section 18633 that is filed on or before the
31 due date of the return, as extended, that the taxpayer designates
32 in the manner prescribed by the Franchise Tax Board as the
33 taxpayer’s final annual tax return for purposes of the tax imposed
34 under this chapter. For purposes of this chapter, a “final annual
35 tax return” is a return filed pursuant to Section 18633 where the
36 taxpayer is not required to file a subsequent return to reflect the
37 imposition of tax under this chapter.

38 SEC. 54. Section 23153 of the Revenue and Taxation Code is
39 amended to read:

23153. (a) Every corporation described in subdivision (b) shall be subject to the minimum franchise tax specified in subdivision (d) from the earlier of the date of incorporation, qualification, or commencing to do business within this state, until the effective date of dissolution or withdrawal as provided in Section 23331 or, if later, the date the corporation ceases to do business within the limits of this state.

(b) Unless expressly exempted by this part or the California Constitution, subdivision (a) shall apply to each of the following:

(1) Every corporation that is incorporated under the laws of this state.

(2) Every corporation that is qualified to transact intrastate business in this state pursuant to Chapter 21 (commencing with Section 2100) of Division 1 of Title 1 of the Corporations Code.

(3) Every corporation that is doing business in this state.

(c) The following entities are not subject to the minimum franchise tax specified in this section:

(1) Credit unions.

(2) Nonprofit cooperative associations organized pursuant to Chapter 1 (commencing with Section 54001) of Division 20 of the Food and Agricultural Code that have been issued the certificate of the board of supervisors prepared pursuant to Section 54042 of the Food and Agricultural Code. The association shall be exempt from the minimum franchise tax for five consecutive taxable years, commencing with the first taxable year for which the certificate is issued pursuant to subdivision (b) of Section 54042 of the Food and Agricultural Code. This paragraph only applies to nonprofit cooperative associations organized on or after January 1, 1994.

(d) (1) Except as provided in paragraph (2), paragraph (1) of subdivision (f) of Section 23151, paragraph (1) of subdivision (f) of Section 23181, and paragraph (1) of subdivision (c) of Section 23183, corporations subject to the minimum franchise tax shall pay annually to the state a minimum franchise tax of eight hundred dollars (\$800).

(2) The minimum franchise tax shall be twenty-five dollars (\$25) for each of the following:

(A) A corporation formed under the laws of this state whose principal business when formed was gold mining, which is

1 inactive and has not done business within the limits of the state
2 since 1950.

3 (B) A corporation formed under the laws of this state whose
4 principal business when formed was quicksilver mining, which is
5 inactive and has not done business within the limits of the state
6 since 1971, or has been inactive for a period of 24 consecutive
7 months or more.

8 (3) For purposes of paragraph (2), a corporation shall not be
9 considered to have done business if it engages in other than
10 mining.

11 (e) Notwithstanding subdivision (a), for taxable years
12 beginning on or after January 1, 1999, and before January 1,
13 2000, every “qualified new corporation” shall pay annually to the
14 state a minimum franchise tax of five hundred dollars (\$500) for
15 the second taxable year. This subdivision shall apply to any
16 corporation that is a qualified new corporation and is
17 incorporated on or after January 1, 1999, and before January 1,
18 2000.

19 (1) The determination of the gross receipts of a corporation,
20 for purposes of this subdivision, shall be made by including the
21 gross receipts of each member of the commonly controlled
22 group, as defined in Section 25105, of which the corporation is a
23 member.

24 (2) “Gross receipts, less returns and allowances reportable to
25 this state,” means the sum of the gross receipts from the
26 production of business income, as defined in subdivision (a) of
27 Section 25120, and the gross receipts from the production of
28 nonbusiness income, as defined in subdivision (d) of Section
29 25120.

30 (3) “Qualified new corporation” means a corporation that is
31 incorporated under the laws of this state or has qualified to
32 transact intrastate business in this state, that begins business
33 operations at or after the time of its incorporation and that
34 reasonably estimates that it will have gross receipts, less returns
35 and allowances, reportable to this state for the taxable year of one
36 million dollars (\$1,000,000) or less. “Qualified new corporation”
37 does not include any corporation that began business operations
38 as a sole proprietorship, a partnership, or any other form of
39 business entity prior to its incorporation. This subdivision shall

1 not apply to any corporation that reorganizes solely for the
2 purpose of reducing its minimum franchise tax.

3 (4) This subdivision shall not apply to limited partnerships, as
4 defined in Section 17935, limited liability companies, as defined
5 in Section 17941, limited liability partnerships, as defined in
6 Section 17948, charitable organizations, as described in Section
7 23703, regulated investment companies, as defined in Section
8 851 of the Internal Revenue Code, real estate investment trusts,
9 as defined in Section 856 of the Internal Revenue Code, real
10 estate mortgage investment conduits, as defined in Section 860D
11 of the Internal Revenue Code, financial asset securitization
12 investment trusts, as defined in Section 860L of the Internal
13 Revenue Code, qualified Subchapter S subsidiaries, as defined in
14 Section 1361(b)(3) of the Internal Revenue Code, or to the
15 formation of any subsidiary corporation, to the extent applicable.

16 (5) For any taxable year beginning on or after January 1, 1999,
17 and before January 1, 2000, if a corporation has qualified to pay
18 five hundred dollars (\$500) for the second taxable year under this
19 subdivision, but in its second taxable year, the corporation's
20 gross receipts, as determined under paragraphs (1) and (2),
21 exceed one million dollars (\$1,000,000), an additional tax in the
22 amount equal to three hundred dollars (\$300) for the second
23 taxable year shall be due and payable by the corporation on the
24 due date of its return, without regard to extension, for that year.

25 (f) (1) Notwithstanding subdivision (a), every corporation that
26 incorporates or qualifies to do business in this state on or after
27 January 1, 2000, shall not be subject to the minimum franchise
28 tax for its first taxable year.

29 (2) This subdivision shall not apply to limited partnerships, as
30 defined in Section 17935, limited liability companies, as defined
31 in Section 17941, limited liability partnerships, as defined in
32 Section 17948, charitable organizations, as described in Section
33 23703, regulated investment companies, as defined in Section
34 851 of the Internal Revenue Code, real estate investment trusts,
35 as defined in Section 856 of the Internal Revenue Code, real
36 estate mortgage investment conduits, as defined in Section 860D
37 of the Internal Revenue Code, financial asset securitization
38 investment trusts, as defined in Section 860L of the Internal
39 Revenue Code, and qualified Subchapter S subsidiaries, as

1 defined in Section 1361(b)(3) of the Internal Revenue Code, to
2 the extent applicable.

3 (3) This subdivision shall not apply to any corporation that
4 reorganizes solely for the purpose of avoiding payment of its
5 minimum franchise tax.

6 (g) Notwithstanding subdivision (a), a domestic corporation,
7 as defined in Section 167 of the Corporations Code, that files a
8 certificate of dissolution in the office of the Secretary of State
9 pursuant to subdivision (c) of Section 1905 of the Corporations
10 Code, prior to its amendment by the act amending this
11 subdivision, and that does not thereafter do business shall not be
12 subject to the minimum franchise tax for taxable years beginning
13 on or after the date of that filing.

14 (h) The minimum franchise tax imposed by paragraph (1) of
15 subdivision (d) shall not be increased by the Legislature by more
16 than 10 percent during any calendar year.

17 SEC. 55. Section 23332 of the Revenue and Taxation Code is
18 amended to read:

19 23332. (a) Except in the case of a taxpayer subject to the
20 provisions of Section 23222a, any taxpayer which is dissolved or
21 withdraws from the state during any taxable year shall pay a tax
22 only for the months of the taxable year which precede the
23 effective date of the dissolution or withdrawal, according to or
24 measured by (1) the net income of the preceding income year or
25 (2) a percentage of net income determined by ascertaining the
26 ratio which the months of the taxable year, preceding the
27 effective date of dissolution or withdrawal, bears to the months
28 of the income year, whichever is the lesser amount. The taxes
29 levied under this chapter shall not be subject to abatement or
30 refund because of the cessation of business or corporate existence
31 of any taxpayer pursuant to a reorganization, consolidation, or
32 merger (as defined by Section 23251). In any event, each
33 corporation shall pay a tax not subject to offset for the period in
34 an amount equal to the minimum tax prescribed by Section
35 23153.

36 (b) The provisions of subdivision (a) shall be applied only
37 with respect to taxpayers which dissolve or withdraw before
38 January 1, 1973. On and after that date, the tax for the taxable
39 year in which the taxpayer ceases doing business, dissolves or
40 withdraws shall be determined under the appropriate provisions

1 of Section 23151.1, 23153, 23181, or 23183, whichever is
2 applicable.

3 (c) (1) A corporation shall not be subject to the minimum
4 franchise tax imposed by this chapter for a taxable year if the
5 corporation does all of the following:

6 (A) Files a timely final franchise tax return for a taxable year
7 with the Franchise Tax Board.

8 (B) Does not do business in this state after the end of the
9 taxable year for which the final franchise tax return was filed.

10 (C) (i) In the case of a corporation other than a corporation
11 described in clause (ii), files a certificate of dissolution or
12 surrender with the Secretary of State, in accordance with ~~Section~~
13 ~~1905 of the Corporations Code; Sections 1809, 1905, 2112, 6615,~~
14 ~~8615, and 12635 of the Corporations Code and Section 3126 of~~
15 ~~the Financial Code~~, before the end of the 12-month period
16 beginning with the date the final franchise tax return was filed.

17 (ii) In the case of a limited liability company that is a
18 corporation pursuant to subdivision (c) of Section 23038, files a
19 certificate of cancellation with the Secretary of State, in
20 accordance with Section 17356 or 17455 of the Corporations
21 Code, before the end of the 12-month period beginning with the
22 date the final franchise tax return was filed.

23 (2) For purposes of this subdivision, a “final franchise tax
24 return” is a return filed pursuant to Section 18601 on or before
25 the due date of the return, as extended, that the taxpayer
26 designates in the manner prescribed by the Franchise Tax Board
27 as the taxpayer’s final franchise tax return for purposes of the tax
28 imposed under this chapter. A final franchise tax return for
29 purposes of the tax imposed under this chapter is a return filed
30 pursuant to Section 18601 where the taxpayer is not required to
31 file a subsequent return to reflect the imposition of tax under this
32 chapter.

33 SEC. 56. Section 23334 of the Revenue and Taxation Code is
34 repealed.

35 SEC. 57. Section 23335 of the Revenue and Taxation Code is
36 amended to read:

37 23335. (a) Any return filed pursuant to Section 18601 that
38 the taxpayer designates in the appropriate place on the form
39 provided by the Franchise Tax Board as the taxpayer’s final
40 franchise tax return as the result of a dissolution or withdrawal

1 shall be treated as a request for information on how to properly
2 dissolve or withdraw.

3 (b) If a taxpayer has filed a return as described in subdivision
4 (a), the Franchise Tax Board shall provide the taxpayer with
5 information regarding all documents that are required by this
6 article to be filed with the Franchise Tax Board and the Secretary
7 of State.

8 SEC. 58. Section 23561 of the Revenue and Taxation Code is
9 amended to read:

10 23561. No decree of dissolution shall be made and entered by
11 any court, nor shall the county clerk of any county or the
12 Secretary of State file any such decree, or file any other
13 document by which the term of existence of any taxpayer shall be
14 reduced or terminated, nor shall the Secretary of State file any
15 certificate of the surrender by a foreign corporation of its right to
16 do intrastate business in this State if the corporate powers, rights,
17 and privileges of the corporation have been suspended or
18 forfeited by the Franchise Tax Board for failure to pay the tax,
19 penalties, or interest due under this part or Part 10.2
20 (commencing with Section 18401).

21 *SEC. 58.5. (a) Section 5.5 of this bill incorporates*
22 *amendments to Section 1113 of the Corporations Code proposed*
23 *by both this bill and AB 339. It shall only become operative if (1)*
24 *both bills are enacted and become effective on or before January*
25 *1, 2007, (2) each bill amends Section 1113 of the Corporations*
26 *Code, and (3) this bill is enacted after AB 339, in which case*
27 *Section 5 of this bill shall not become operative.*

28 *(b) Section 17.5 of this bill incorporates amendments to*
29 *Section 6019.1 of the Corporations Code proposed by both this*
30 *bill and AB 339. It shall only become operative if (1) both bills*
31 *are enacted and become effective on or before January 1, 2007,*
32 *(2) each bill amends Section 6019.1 of the Corporations Code,*
33 *and (3) this bill is enacted after AB 339, in which case Section 5*
34 *of this bill shall not become operative.*

35 SEC. 59. This act provides for a tax levy within the meaning
36 of Article IV of the Constitution and shall go into immediate
37 effect.